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No. 10351

United States
Circuit Court of Appeals
For the Ninth Circuit.

Vol
2343

NAT ROGAN, Collector of Internal Revenue for the Sixth District of California,

Appellant,

vs.

JAMES A. KAMMERDINER, individually and as Surviving Joint Tenant of Myrtle B. Kammerdiner, deceased,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division

FILED
MAR 2 1943
PAUL P. O'BRIEN,
CLERK

ROTARY COLORPRINT, 590 FOLSOM ST., SAN FRANCISCO 60-2-25-43

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Circuit Court of Appeals
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RALPH W. SMITH, Esq.,

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Los Angeles, California. [1*]

*Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States in and for the Southern District of California, Central Division.

No. 995-B—Civil

JAMES A. KAMMERDINER, Individually and as Surviving Joint Tenant of

MYRTLE B. KAMMERDINER, Deceased,
Plaintiff

v.

NAT ROGAN, Collector of Internal Revenue of the Sixth District of California,
Defendant

COMPLAINT FOR REFUND OF FEDERAL ESTATE TAXES ILLEGALLY COLLECTED.

Plaintiff herein for cause of action against the Defendant alleges:

I.

That on or about the fourth day of April, 1935, Myrtle B. Kammerdiner died in the City of Los Angeles, State of California, but left no estate and made no transfers of property other than Joint Tenancy property set forth in Form 706 hereafter referred to. That she was at the time of her death a resident of the City of Los Angeles, State of California, Sixth District of California. That at the time of her death she owned certain real and personal property in joint tenancy with the Plain-

tiff herein. That upon and by virtue of her death, said real and personal property so held by her in joint tenancy with Plaintiff herein vested solely in Plaintiff. That Plaintiff is the surviving husband of said Myrtle B. Kammerdiner.

II.

That on or about the 1st day of July, 1935, the defendant, Nat Rogan, was duly appointed United States Collector of Internal Revenue for the Sixth District of California, and continuously thereafter was and still is the duly appointed, qualified, and acting Collector of Internal Revenue for the said district and was, during [2] all of said times and still is, a resident and inhabitant of the City of Los Angeles, State of California, and of the Sixth District of California.

III.

That Plaintiff, a resident of said district as such surviving joint tenant of Myrtle B. Kimmerdiner, did duly file on or about the 16th day of March, 1936 with the Defendant as Collector of Internal Revenue for the Sixth District of California, a federal estate tax return, Form 706, in accordance with the provisions of law in that regard and the regulation of the Secretary of Treasury of the United States in pursuance thereof, showing therein a total net federal estate tax of $4,332.27; that at the time of filing said return, Plaintiff, as such surviving joint tenant as aforesaid, paid the Defendant as Collector of Internal Revenue of the

United States for the Sixth District of California, on account of said federal estate tax so returned, the sum of $3,943.91, and on or about the 17th day of August, 1936, paid to Defendant the balance of said federal estate tax as so returned with interest thereon in full to the said date of payment.

IV.

That in due course the federal estate tax return, Form 706, was audited by the office of the Commissioner of Internal Revenue, resulting, on the 18th day of January, 1937, in a tentative determination of deficiency tax amounting to $56,800.80. That Plaintiff, as surviving joint tenant as aforesaid, was informed of such tentative determination by a deficiency letter dated January 18, 1937, a true copy of which is attached hereto and by specific reference made a part hereof and marked Exhibit A. [3]

V.

That thereafter and as a result of a protest duly filed with the Commissioner of Internal Revenue, and following consideration thereof by his office, the Commissioner of Internal Revenue did, on November 10, 1937, notify Plaintiff of his contemplated action in regard to said protest, said contemplated action showing a deficiency tax of $30,328.11, instead of $56,800.80, as shown in said Commissioner's letter of January 18, 1937. A true copy of said letter of November 10, 1937, showing the reduced deficiency tax, is attached hereto and by

specific reference made a part hereof and marked Exhibit B.

VI.

That after the submission of further evidence by Plaintiff, the Commissioner of Internal Revenue did on January 26, 1938 tentatively redetermine the deficiency in said federal estate tax in the amount of $23,816.11 and further tentatively determined: "If the evidence is furnished showing that the estate is entitled to the credit of eighty per cent against the tax as determined under the Revenue Act of 1926, the net deficiency will be $19,706.44. That Plaintiff, as such surviving joint tenant, as aforesaid, was informed of such tentative redetermination by a deficiency letter dated January 26, 1938, a true copy of which is attached hereto and by specific reference made a part hereof and marked Exhibit C.

VII.

That on March 18, 1938, the Commissioner of Internal Revenue finally redetermined the deficiency in said federal estate tax in accordance with the deficiency indicated in his said letter of January 26, 1938 in the amount of $23,816.11. That Plaintiff, as such surviving joint tenant, as aforesaid, was informed of such final redetermination of said deficiency in the said federal estate tax by a deficiency letter dated March 18, 1938, a true copy of which is attached hereto and by specific reference made a part hereof and marked Exhibit D. [4]

VIII.

That on May 10, 1938, Plaintiff, as such surviving joint tenant, as aforesaid, paid the defendant, as Collector of Internal Revenue of the United States for the Sixth District of California, $19,706.44, the total amount of the deficiency in federal estate tax in said matter as finally determined by the Commissioner of Internal Revenue on March 18, 1938, in excess of the proper credit for California inheritance tax, $4,109.67, together with interest thereon at six per cent per annum from April 4, 1936 to the said date of payment $2,384.21, or a total payment of deficiency estate tax and interest of $22,090.65.

IX.

That on April 26, 1939, the said Commissioner of Internal Revenue acknowledged in writing to Plaintiff that "the estate has submitted evidence of payment of State estate, inheritance, legacy, or succession taxes as required by Article 9, Regulations 80, entitled it to a credit of $4,109.67, which is herein allowed." A true copy of said written acknowledgment of April 26, 1939 is attached hereto and by specific reference made a part hereof and marked Exhibit E.

X.

That on May 31, 1939, said Commissioner of Internal Revenue, after a final audit of the said estate tax return, issued a certificate of overassessment covering said $4,109.67, "Credit for State estate, inheritance, legacy or succession taxes," and in-

terest thereon, leaving as the final redetermination of deficiency in said federal estate tax, $19,706.44, which said amount was, as stated in paragraph VIII hereof, paid in full by Plaintiff on March 18, 1938, with all interest payable thereon to the said date of payment, [5] total payment redetermined deficiency and interest, $22,090.65. A true copy of said certificate of overassessment of May 31, 1939 is attached hereto and by specific reference made a part hereof and marked Exhibit F.

XI.

That thereafter, to-wit, on or about the 7th day of July, 1939, the said Plaintiff duly and regularly filed with the said Defendant, as Collector of Internal Revenue of the United States for the Sixth District of California, for transmittal to the Commissioner of Internal Revenue of the United States, a claim for refund of federal estate tax erroneously and illegally assessed and collected in said matter in the sum of $22,090.65, "(or such greater amount as is legally refundable)".

XII.

That on or about the seventeenth day of October, 1939, the said Plaintiff duly and regularly filed with the said Defendant, as Collector of Internal Revenue of the United States for the Sixth District of California, for transmittal to the said Commissioner of Internal Revenue of the United States an amended claim for refund of federal estate tax erroneously and illegally assessed and collected in

said matter in the said sum of $22,090.65, "(or such greater amount as is legally refundable)", and interest. Said amended claim was filed in substitution of said former claim filed as aforesaid on the 7th day of July, 1939. A true copy of said amended claim for refund is attached hereto and by specific reference made a part hereof and marked Exhibit G. That thereafter, said Commissioner of Internal Revenue, having audited said amended claim for refund, did find and determine that there had not been an overassessment or overpayment of federal estate tax against or by Plaintiff, individually or as such surviving joint tenant of the said [6] Myrtle B. Ka*nn*erdiner, deceased, or the estate of said Myrtle B. Ka*nn*erdiner, deceased, in excess of the amount for which certificate of overassessment was, as stated in Paragraph X hereof, issued on May 31, 1939, and did therefore reject said claim for refund in its entirety by written rejection dated February 2, 1940. A true copy of said rejection in the form of a letter to Plaintiff dated February 2, 1940, signed by D. S. Bliss, Deputy Commissioner of Internal Revenue is attached hereto and by this specific reference made a part hereof and marked Exhibit H.

That the Commissioner of Internal Revenue in said letter of February 2, 1940, a copy of which is attached hereto as "Exhibit H", in referring to the interest of decedent in the rotary jar business included in the federal estate tax return herein, Form 706, as Item One of "Other Miscellaneous Prop-

erty" states: "The records of the Bureau show that the value of decedent's interest was determined at $175,000.00 for the purpose of final adjustment, which adjustment was agreed to by the estate." The Plaintiff denies that a final adjustment was at any time made or agreed to in relation to the said federal estate tax or the determined tax deficiency. And in this connection, Plaintiff alleges that on the third day of January, 1928, decedent and her husband, Plaintiff herein, entered into an agreement in relation to the manufacture, renting and selling of rotary jars, that the subject of said agreement was community property of the parties acquired prior to July 29, 1927, and is referred to in Item One of "Other Miscellaneous Property" in the federal estate tax return, Form 706, herein. That a copy of said agreement is attached, as Exhibit A to and a part of the said Exhibit G appended hereto as aforesaid. That by the terms of said agreement, the said business and property therein referred to was either community property acquired [7] before July 29, 1927 or joint tenancy property and, therefore, no part of it was or is a proper part of decedent's gross estate for estate tax purposes for the reason that the decedent was not the original owner of any part thereof and any interest if any therein of the decedent was not received for a valuable or adequate consideration. That said Commissioner of Internal Revenue failed to give due consideration to the effect of said agreement in determining the federal estate tax payable herein.

XIII.

That the Commissioner of Internal Revenue of the United States erroneously and illegally exacted from Plaintiff federal estate tax in the following particulars, to-wit:

(a) That the Commissioner of Internal Revenue erred in including in the gross estate of the said Myrtle B. Kammerdiner any interest or value in the rotary jar business, included in the federal estate tax return herein, Form 706, as Item One of "Other Miscellaneous Property."

(b) That the Commissioner of Internal Revenue erred in including as an asset of said rotary jar business the patents issued to and owned by Plaintiff and securing to him the sole right to manufacture said rotary jars.

(c) That the Commissioner of Internal Revenue erred in finding that one-half of said rotary jar business, including rotary jars on hand, good will and patents issued to and owned by Plaintiff was of the value of $175,000.00 or of any value in excess of $100,000.00.

(d) That the Commissioner of Internal Revenue erred in finding that the said rotary jar business was not owned by decedent and Plaintiff either as the community property of said spouses acquired prior to July 29, 1927 or in joint tenancy [8] created out of such community property or out of such community property and property of decedent which had been given to her by Plaintiff, and therefore not a part of her gross estate for federal estate tax purposes.

That by reason of the foregoing said taxpayer overpaid his federal estate tax in the amount of $22,090.65.

Wherefore, Plaintiff prays judgment in his favor against Defendant in the sum of $22,090.65, with interest thereon at the rate of six per cent (6%) per annum from May 10, 1938 to the date of payment, and for his costs herein expended, and for such other and further relief as the Court may deem meet and proper in the premises.

Dated this 10th day of June, 1940.

CLAUDE I. PARKER and
RALPH W. SMITH
Attorneys for Plaintiff

Of Counsel:
W. H. H. GENTRY

(Duly verified.) [9]

EXHIBIT A

TREASURY DEPARTMENT
Washington

Office of Commissioner of Internal Revenue,
Address Reply to
Commissioner of Internal Revenue and Refer to
MT-ET-8199-6th California.
Estate of Myrtle B. Kammerdiner
Date of Death—April 4, 1935.

January 18, 1937.

James A. Kammerdiner, Executor,
237 South Highland,
Los Angeles, California.

Sir:

A deficiency in the Federal estate tax liability of the above-named estate is hereby proposed as the result of an examination of the return, Form 706, the revenue agent's report, and other data on file.

If you acquiesce in the proposed deficiency, you are requested to execute and forward the enclosed Form 890, which is a waiver of the statutory restrictions upon the immediate assessment and collection of the deficiency. The submission of the waiver will expedite the closing of the case and will also lessen the accumulation of interest, since the interest period will then terminate thirty days after filing of the waiver or on the date of assessment, whichever is earlier. Should you desire to consent to the assessment and collection of only a part of the deficiency, the waiver may be executed

for such partial amount. The execution of the waiver does not prejudice your right to file a claim for refund of all or any portion of the tax.

The issuance of this notice does not permit a petition to the United States Board of Tax Appeals. However, a protest against the proposed deficiency may be filed within 30 days from the date of this letter. If a hearing is desired in this office, or if no [11] hearing is contemplated, the protest should be filed with this office. If a hearing is desired in the local division, the protest should be filed with the Internal Revenue Agent in Charge, Los Angeles, California. A protest must be filed in duplicate, and (a) present fully the grounds upon which made, supported by the evidence relied upon, and (b) state whether a hearing is requested. Any statements of fact included therein must be under oath.

If the case cannot be closed upon the basis of a waiver, or if a protest is not filed within the specified time, a formal notice of deficiency will be issued under section 308(a) of the Revenue Act of 1926, as amended, and you may then petition the United States Board of Tax Appeals for redetermination of the tax liability.

A copy of this letter is being forwarded to the Internal Revenue Agent in Charge, 939 South Broadway, Los Angeles, California.

Examination of the return discloses the following:

	Returned	Tentatively Determined	
Gross estate	$142,904.64	$512,716.86	
Deductions (1926 Act)	103,486.72	102,016.51	
Net estate (1926 Act)	$ 39,417.92	$410,700.35	
Gross estate	$142,904.64	$512.716.86	
Deductions (1932 Act)	53,486.72	52,016.51	
Net estate (1932 Act)	$ 89,417.92	$460,700.35	
1. Gross tax (1926 Act)	$ 394.18	$ 13,035.02	
2. Credit for gift tax	0.00	0.00	
3. Gross tax less gift tax credit	394.18	13,035.02	
4. Credit for estate or inheritance tax	315.84	0.00	
5. Net tax (1926 Act)	$ 78.84*		$ 13,035.02
			[12]
6. Total gross taxes (1926 and 1932 Acts)	$ 4,647.61	$ 61,133.07	
7. Gross tax 1926 Act	394.18	13,035.02	
8. Gross add'l. tax	$ 4,253.43	$ 48,098.05	
9. Credit for gift tax	0.00	0.00	
10. Net add'l. tax	$ 4,253.43	$ 48,098.05	
11. Total net tax	$ 4,332.27	$ 61,133.07	

*Should be $78.34

Amount assessed as deficiency pursuant to waiver	0.00	4,332.27
Deficiency		$56,800.80

The deficiency bears interest at the rate of 6 per cent per annum from one year after the decedent's death to the date of assessment, or to the thirtieth day after the filing of a waiver of the restrictions on the assessment, whichever is the earlier.

The deficiency results from the following adjustments:

GROSS ESTATE

Jointly Owned Property	Returned	Tentatively Determined
Item 14	$ 5,380.00	$ 10,760.00
Item 15	2,500.00	5,000.00
Item 16	900.00	1,800.00
Item 17	3,125.00	5,000.00
Item 18	5,000.00	5,625.00
Item 25	5,151.00	5,188.88
Item 27	10,750.00	10,756.25
Interest on Item 27	0.00	66.88
Interest on Item 28	0.00	137.77
Interest on Item 29	0.00	230.44
		[13]
Item 31	3,250.00	3,300.00
Item 41	855.00	1,710.00
Items 14, 15 and 16 under this schedule are included in full values as it does not appear upon investigation that contributions toward the purchase prices of these items were made by any other person than the decedent.		
Other Miscellaneous Property		
Item 1	$ 0.00	$357,148.00
Decedent's interest in the business of leasing rotary jars for oil wells, patents, royalties, partnership, etc., is valued as follows:		

Average net earnings for the past 10 years is about $73,000.00 per year, or for the next 17 years will, at the same rate, amount to $1,241,000.00. The Factor for 17 years at the rate of 6% is .575581 and $1,241.00 × .575581 = $714,296.02, and ½ of this amount is accepted as the value of the item considered under this schedule.

DEDUCTIONS

	Tentatively Determined	Returned
Miscellaneous administration expenses	$ 1,228.78	$ 2,698.99
To balance	$371,282.43	

Under miscellaneous administration expenses one-half of the taxes due at the date of death are allowed since payment was made from the joint bank account of the decedent and her husband.

Credit

No allowance is made for credit on account of State estate, inheritance, legacy or succession taxes paid, for the reason that [14] the evidence required under Article 9 of Regulations 80 has not been submitted. Please advise when the credit evidence may be expected.

If the full eighty per cent credit is allowed, the net deficiency tax will be $46,372.78. Execution of the enclosed waiver as to that amount will enable the Bureau to assess the full amount of the probable net tax and expedite the closing of the case.

Respectfully,

(Sg.) D. S. BLISS

Deputy Commissioner.

Enclosure Waiver. [15]

EXHIBIT B

TREASURY DEPARTMENT
Washington

Office of
Commissioner of
Internal Revenue

Nov. 10, 1937

Address Reply to
Commissioner of Internal Revenue
and Refer To
MT-ET-C1-8199-6th California
Estate of Myrtle B. Krammerdiner
Date of death—April 4, 1935

James A. Kammerdiner, Executor,
237 South Hghland,
Los Angeles, California.

Sir:

Reference is made to Bureau letter of January 18, 1937, which tentatively determined a deficiency in estate tax in the above-named estate in the amount of $56,800.80. A protest against the tentative determination was filed in this office on March 17, 1937, and at a hearing the estate was represented by L. A. Luce and Ralph W. Smith acting under a power of attorney.

The protest relates to the following items and adjustments are proposed as indicated:

GROSS ESTATE

Jointly Owned Property	Returned	Tentatively Determined	Proposed Determination
Item 11	$ 3,375.00	$ 3,375.00	$ 0.00
Item 12	1,125.00	1,125.00	0.00

Gross Estate—(Cont'd.)

Jointly Owned Property	Returned	Tentatively Determined	Proposed Determination
Item 13	2,500.00	2,500.00	0.00
Item 14	5,380.00	10,760.00	10,760.00
Item 15	2,500.00	5,000.00	5,000.00
Item 16	900.00	1,800.00	1,800.00
			[16]
Item 17	3,125.00	5,000.00	5,000.00
Item 18	5,000.00	5,625.00	0.00

The protest as to items 11, 12, 13 and 18 is sustained and the values as tentatively determined are herein eliminated from the gross estate. The evidence submitted indicated that the property represented by these items was purchased with community funds acquired prior to July 1927, in which the wife had a mere expectancy and she made no contribution to the purchase of the jointly owned property.

As to items 14, 15 and 16 the protest is rejected. As to these items it is contended that although the property was inherited by the decedent from her parents, the decedent and her husband contributed to the maintenance and upkeep of the property from community funds for many years and therefore resulted indirectly in a contribution of the husband to the acquisition of the property. Such a contention is not accepted by the Bureau.

The protest as to item 17 was to the effect that only one-half of the value should have been included in the gross estate. In the audit only one-half of the value as determined by the Bureau was included and the protest as to this item is rejected.

Gross Estate—(Cont'd.)

Other Miscellaneous Property	Returned	Tentatively Determined	Proposed Determination
Item 1	$ 0.00	$357,148.00	$215,700.00

The Bureau holds that the decedent and her husband were equal partners in the business of leasing rotary jars for oil wells. This question was before the Board of Tax Appeals in the case of Kammerdiner v. Commissioner, 25 B.T.A. 495 and it was held that an equal partnership existed. Decedent's interest in the partnership [17] is herein valued at $215,700.00.

The following summary is submitted:

Gross estate		$358,643.86
Deductions, 1926 Act		102,016.51
Net estate, 1926 Act		$256,627.35
Net estate, 1934 Act		$306,627.35
Gross tax, 1926 Act	$ 6,765.09	
Credit for State estate, inheritance, legacy, or succession taxes	0.00	
Net tax, 1926 Act		$ 6,765.09
Gross taxes, 1926 and 1934 Acts	$ 34,660.38	
Gross tax, 1926 Act	6,765.09	
Additional tax		27,895.29
Total net tax		$ 34,660.38
Tax returned		4,332.27
Deficiency		$ 30,328.11

If the evidence is furnished showing that the estate is entitled to the credit of 80 per cent against the tax as determined under the Revenue Act of

1926, the net deficiency will be $24,916.04. Execution of the enclosed waiver as to that amount will enable the Bureau to assess the net deficiency and expedite the closing of this case and will also stop the running of interest.

This is not a final determination of the tax liability in this case and no appeal herefrom lies to the Board of Tax Appeals. A reply to this letter within twenty days from this date will be appreciated.

Respectfully,
D. S. BLISS,
Deputy Commissioner.

Enclosure:
Waiver. [18]

EXHIBIT C

Jan. 26, 1938.

MT-ET-C1-8199-6th California
Estate of Myrtle B. Kammerdiner
Date of death—April 4, 1935

James A. Kammerdiner, Executor,
237 South Highland,
Los Angeles, California.

Sir:

Reference is made to Bureau letters of January 18 and November 10, 1937, which tentatively determined a deficiency in estate tax in the above-named estate. Since the mailing of Bureau letter of November 10, 1937, the estate has submitted further

evidence relative to the value of decedent's interest in the business of leasing rotary jars for oil wells and the evidence submitted shows that the estate has endeavored to sell the entire business for $250,000.00, but so far has been unable to do so. A value of $175,000.00 for decedent's interest has been agreed upon in this estate tax case. This business was returned as item 1 under other miscellaneous property in the estate tax return and the following adjustment is proposed:

GROSS ESTATE

Other Miscellaneous Property	Returned	Proposed Determination	Proposed Re-Determination
Item 1$	0.00	$215,700.00	$175,000.00

The following summary is submitted:

Gross estate	$317,943.86
Deductions (1926 Act)	102,016.51
Net estate (1926 Act)	$215,927.35
Net estate (1932 Act)	$265,927.35
Gross tax (1926 Act)	$ 5,137.09

[19]

Credit for State estate, inheritance, legacy or succession taxes	0.00
Net tax (1926 Act)	$ 5,137.09
Total gross taxes (1926 and 1932 Acts)	$ 28,148.38
Gross tax (1926 Act)	5,137.09
Net additional tax	$ 23,011.29
Net tax (1926 Act)	5,137.09
Total net tax	$ 28,148.38
Amount assessed on return	4,332.27
Deficiency	$ 23,816.11

If the evidence is furnished showing that the estate is entitled to the credit of 80 per cent against the tax as determined under the Revenue Act of 1926, the net deficiency will be $19,706.44. Execution of the enclosed waiver will enable the Bureau to assess the net deficiency and expedite the closing of this case and will also stop the running of interest.

This is not a final determination of the tax liability in this case and no appeal herefrom lies to the Board of Tax Appeals. Your reply to this letter within twenty days from the date hereof will be appreciated.

Respectfully,

(Signed) D. S. BLISS,

Deputy Commissioner.

Encl.—Waiver.

JBM-ER [20]

EXHIBIT D

TREASURY DEPARTMENT
Washington

Office of
Commissioner of Internal Revenue

Mar. 18, 1938.

Address Reply to
Commissioner of Internal Revenue
And Refer to

MT-ET-8199-6th California
Estate of Myrtle B. Kammerdiner
Date of Death—April 4, 1935

James A. Kammerdiner, Executor,
237 South Highland,
Los Angeles, California.

Sir:

Reference is made to Bureau letter addressed to you under date of January 26, 1938, indicating a deficiency in estate tax due from the above-named estate amounting to $23,816.11. The determination of such deficiency is final, subject to allowance of credit for State estate, inheritance, legacy or succession taxes.

Of the deficiency, $19,706.44 has been assessed in accordance with a signed waiver, Form 890. As the balance of the deficiency in tax is due to the disallowance of credit for such State taxes, the assessment thereof will be deferred pending advice relative to the submission of the evidence required by Article 9, Regulations 80.

Payment of the portion of the deficiency and in-

terest assessed should be made to the collector upon receipt of his notice and demand.

Respectfully,
D. S. BLISS,
Deputy Commissioner. [21]

EXHIBIT E

MT-ET-8199-6th California.
Estate of Myrtle B. Kammerdiner
Date of death—April 4, 1935.

April 26, 1939

James A. Kammerdiner, Executor,
237 South Highland
Los Angeles, California.

Sir:

Reference is made to Bureau letter addressed to you under date of March 18, 1939, indicating a deficiency in estate tax due from the above-named estate amounting to $23,816.11, which has been assessed.

Since the mailing of the above-mentioned letter the estate has submitted evidence of payment of State estate, inheritance, legacy or succession taxes as required by Article 9, Regulations 80, entitling it to a credit of $4,109.67, which is herein allowed.

A certificate of overassessment will be issued in due course.

Respectfully,
(Signed) D. S. BLISS,
Deputy Commissioner.

MWB:HLE [22]

EXHIBIT F

TREASURY DEPARTMENT
Office of
Commissioner of Internal Revenue
Washington

May 31, 1939.

Miscellaneous Tax Unit — Certificate of Overassessment
MT-ET- — Number: 8199-6th Calif.
Allowed: $4,606.88
Schedule No. MTR:20435

James A. Kammerdiner, Executor,
u/w of Myrtle B. Kammerdiner,
237 South Highland,
Los Angeles, California.

Sir:

An audit of the estate tax return, Form 706, of the estate of Myrtle B. Kammerdiner, who died April 4, 1935, and a consideration of all the claims (if any) filed by you indicates that the tax assessed against the Estate was in excess of the amount due as per the following statement:

Assessments:	
August 1936 List, page 102, line 0	$ 4,332.27
August 1936, page 102, line 0—Interest	8.60
April 1938 5th Supple. List, page 101, line 4	19,706.44
April 1938 5th Supple. List, page 101, line 4—Interest	2,384.21
March 1939 2d Supple. List, page 100, line 0	4,109.67
March 1939 2d Supple. List, page 100, line 0—Interest	497.21
	$31,038.40

Correct tax liability	$28,148.38	
Credit for State estate, inheritance, legacy or succession taxes	4,109.67	
Net tax liability	$24,038.71	
Interest	2,392.81	
Tax and interest payable		26,431.52

[23]

Overassessment $ 4,606.88

This overassessment, no part of which is subject to refund, results from the allowance of credit for the payment of State estate, inheritance, legacy or succession taxes on behalf of the above-named estate, and the adjustment of interest.

The amount of the overassessment will be abated or refunded as indicated below. (The estate will be relieved from the payment of any amount abated; and any amount found to be refundable is covered by a Treasury check transmitted herewith.)

Respectfully,

D. S. BLISS,

Deputy Commissioner.

Date claim filed....None...., 19.....

Abated: $4,606.88

Refunded: $

Interest: $

Instructions Executed

Signature NAT ROGAN

Collector Int. Rev.

A. J. T. [24]

EXHIBIT G

Form 843
Treasury Department
Internal Revenue Service
Revised June 1930
Amended Claim in Substitution of Former Claim Filed on the 7th Day of July, 1939

Collector's Stamp
(Date received)

To Be Filed With the Collector Where Assessment Was Made or Tax Paid

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse sid.

[X X X] Refund of Tax Illegally Collected.

[] Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.

[] Abatement of Tax Assessed (not applicable to estate or income taxes).

State of California,
County of Los Angeles—ss.

Name of taxpayer or purchaser of stamps: James A. Kammerdiner individually and as surviving Joint Tenant of Myrtle B. Kammerdiner, Dec'd.

Business address: 808 Bank of America Building, (Street) Los Angeles (City), California (State).

Residence: 237 South Highland Avenue, Los Angeles, California.

The deponent, being duly sworn according to law, deposes and says that this statement is made on

Exhibit G—(Continued)

behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed, Sixth District, California.

2. Period (if for income tax, make separate form for each taxable year) from, 19...., to, 19.....

3. Character of assessment or tax: Federal Estate Tax.

4. Amount of assessment, $22,090.65; dates of payment, May 10, 1938.

5. Date stamps were purchased from the Government

6. Amount to be refunded (or such greater amount as is legally refundable) $22,090.65 and interest.

7. Amount to be abated (not applicable to income or estate taxes)

8. The time within which this claim may be legally filed expires, under Section..... of the Revenue Act of 19...., on, 19.....

The deponent verily believes that this claim should be allowed for the following reasons:

(Attach letter-size sheets if space is not sufficient)

(Signed) JAMES A. KAMMERDINER

James A. Kammerdiner Individually and as Surviving Joint Tenant of Myrtle D. Kammerdiner, Deceased.

Exhibit G—(Continued)

Sworn to and subscribed before me this 17 day of October, 1939.

[Seal] PEARL ANDERSON
Notary Public [25]

An informal hearing was held before the Bureau of Internal Revenue Department in Washington on the 23rd. day of July, 1939, in relation to the Original Claim for Refund herein filed, and by reason of the failure of the Original Claim for Refund to include Exhibit "A" hereinafter referred to, and further, by reason of the suggestion of the Government Conferee that certain pertinent extracts from the testimony of the case of Kammerdiner v. Commissioner, 25 B.T.A. 495, be included in the Claim for Refund, it was deemed advisable to prepare and file the within as an Amended and Substituted Claim for Refund and to entirely replace the Original Claim for Refund herein filed on July 7th, 1939.

Preliminary Statement

The Commissioner has determined that by reason of the decision of the Board of Tax Appeals in the case above referred to, a partnership existed between decedent and her husband, James A. Kammerdiner, and therefore one-half of all partnership assets are included in her estate, and values this interest at $175,000.00, and failed to recognize the effect and validity of Exhibit "A" hereto attached.

Summary of Facts

Decedent, Myrtle B. Kammerdiner, wife of James A. Kammerdiner, deceased a resident of the

Exhibit G—(Continued)

City of Los Angeles, California, on the 4th day of April, 1935. That prior to January 3, 1928, the said James A. Kammerdiner and Myrtle B. Kammerdiner entered into an oral agreement relative to the income and profits from the business then owned and operated by the said James A. Kammerdiner in the manufacturing, renting and selling of rotary [26] jars, a patented device used in the field in the drilling of oil wells and in the production of oil and gas.

That heretofore protest was duly submitted to the deficiency determination of the Commissioner, and said protest was finally acted upon by the Bureau on January 26, 1938, in a letter over the signature of D. S. Bliss, Esq., Deputy Commissioner, bearing Symbols MT-ET-C1-8199-6th California.

That on the said 3rd day of January, 1928, the said parties duly entered into and executed a written agreement by which they specifically set forth all of their respective right, title and interest in and to said rotary jar business. That an exact copy of this agreement is attached hereto and marked Exhibit "A." That said Exhibit "A" was not altered or amended and remained in full force and effect until the death of the said Myrtle B. Kammerdiner.

That the Commissioner of Internal Revenue, in his report issued by the Internal Revenue Agent in Charge, Alf Oftedal, Esq., of the Los Angeles office, of date May 15, 1930, in auditing the income tax return of Mr. and Mrs. Kammerdiner for the

Exhibit G—(Continued)

year 1928, attached to said report an exact copy of the said written agreement hereto attached and marked Exhibit "A", and in said report made the following finding, to-wit:

> "As of January 3, 1928, a document was drawn up for and signed by J. Kammerdiner and his wife, Myrtle B. Kammerdiner, which they designated as a partnership agreement, but which, in fact, is a joint tenancy [27] agreement and was so considered by the attorney, Kimpton Ellis, who drew it up for the taxpayers." (See Exhibit "A").
>
> "This agreement states, among other things, that all of the assets of the 'rotary jar' business are the community property of husband and wife. The principal asset of the business is the patent which was obtained by the husband in 1923 and under the protection of which he manufactures the 'rotary jar' which produces the income. This patent has never been assigned by J. Kammerdiner and remains his separate property to continue to hold or to dispose of as he may see fit."
>
> "Satisfactory evidence was submitted as to the joint ownership of all of the property which produced the income which was reported on Lines 4-5-7-9 and 10 of Form 1065."

That the income tax return of Mr. Kammerdiner for the calendar year 1929 includes under Paragraph Five which relates to "Income from Partnership" the following notation: "Mr. and Mrs.

Exhibit G—(Continued)

Jas. Kammerdiner, partnership or community property, as per return submitted."

The audit letter of the Commissioner, bearing date of August 14, 1928, over the signature of H. B. Robinson, Head of Division, and bearing Symbols IT:AR:B-10, addressed to Mr. J. Kammerdiner covering the income tax years 1925 and 1926, [28] contains the following recital:

> "Your contention that a partnership existed between you and your wife during the years 1925 and 1926 and that your wife held a vested interest in such partnership as her separate property has been denied. As no specific evidence has been furnished to substantiate your contentions the total income received by you and Mrs. Kammerdiner during the years in question is considered to be community income taxable to you." (Underscoring ours).

The Honorable Commissioner, in his audit letter for the income tax years 1925 and 1926, dated June 12, 1928, addressed to Mr. J. Kammerdiner over the signature of E. C. Wright, Internal Revenue Agent in Charge at Los Angeles, California, makes the following recital:

> "'Taxpayer objects to the change based on the following argument:
>
> "'The Undersigned, James A. Kammerdiner and Myrtle B. Kammerdiner, husband and wife, of Los Angeles, California, hereby state, declare and agree that the business of manufacturing, renting and selling rotary jars,

Exhibit G—(Continued)

heretofore conducted by them under the name of James A. Kammerdiner at 237 South Highland Avenue, Los Angeles, California, all of the assets of which business are their community property, is now and all increase or change thereof shall be, their joint property with [29] right of survivorship.

"'In Witness Whereof we have hereunto affixed our signatures at the City of Los Angeles, California, on the 3rd day of January, 1928.'

"Taxpayers state that they had an oral agreement prior to the above, First Return as a partnership made in 1925." (Underscoring ours).

It is apparent from the foregoing quotation that the agreement set forth was merely a recital of Exhibit "A" hereto attached.

That the principal error involved in this claim is the inclusion in the gross estate of decedent of any part of the property, title to which stood in the name of James A. Kammerdiner at the date of his wife's death, or which was effected by Exhibit "A" hereto attached. The Commissioner, in his letter of January 26, 1938, bearing Symbols MT-ET-C1-8199-6th California, has appraised this interest at $175,000.00 and included said sum in the gross estate of said decedent and determined a net deficiency tax on said estate of $19,706.44 after allowing a credit of 80% against the tax for inheritance taxes paid.

Exhibit G—(Continued)

That the issue in relation to the taxability of the income of Mr. and Mrs. Kammerdiner for years prior to 1928 was reported in the case of Kammerdiner vs. Commissioner, 25 B.T.A. 495. Claimant's Exhibit "A" attached hereto and upon which he relies for relief in the instant matter was not introduced in evidence in the Board case, although said Exhibit "A" was referred to on a number of instances. We take from the Transcript of Record in the Board case, being Docket Nos. 41643 and 46555, [30] which was heard at Los Angeles, California, on June 10, 1931, the following:

Testified by Mr. Kammerdiner:

"Q. What did she do with the money that she collected?

"A. She put it in the joint account in the bank."

(R. 19, l.3).

The Record at this point indicates that all monies from the rotary jar business were placed in a joint bank account. The Record before the Board involved years prior to 1928, this being before the execution of Exhibit "A", and at which time Mr. and Mrs. Kammerdiner had an oral agreement in relation to the income from their properties.

Mr. Kammerdiner testified as follows:

"Q. Have you ever reduced it to writing with respect to the partnership agreement?

"A. We have, in 1928, I believe—August, 1928."

Exhibit G—(Continued)

At page 24, beginning with line six of the Record before the Board, it may be noted in a colloquy between the attorneys for the taxpayer and Government that it was suggested that the audit letters to which reference has been above made be introduced in evidence, but the Government objected to the audit letters, and also to the presentation in evidence Exhibit "A", because they were all immaterial and irrelevant.

We take the following from page 26 of the Record:

> "Mr. Milliken: We will show, your Honor, that this letter—in the first place, my purpose in offering it is this; that when we get into the year 1928, [31] the Government agents had contested this partnership proposition. The evidence will further show, by other witnesses, that these people executed this agreement merely because the Government told them 'We will never recognize it until you do.' Then when they did that, and with no change whatsoever ever having occurred in their relationship, for the year 1928, or the years subsequent to the appeals now before your Honor, they recognize the partnership, then we have the right of appeal to the Board, and they had a small additional tax of some $200 recently, but which we have—which they paid.
>
> Mr. Clark: Well, to that, I object, your Honor.

Exhibit G—(Continued)

The Member: Well, I take it that the situation is something like this: The taxpayer, as to this written agreement, partnership agreement, is contending that it was simply a reduction to writing of the oral agreement that was entered into in 1923, or whenever it was.

By Mr. Milliken:

Q. That was right, wasn't it, Mr. Kammerdiner? A. Yes."

We take the following from page 27 of the record:

"The Member: And I take it the Government's [32] position is that, the very fact that the written agreement was entered into in 1928, is to be regarded as evidence or an indication anyway, that there was no partnership prior to that date."

We take the following from page 28 of the record:

"The Member: And that thereafter, they were in business, and in 1928, when the partnership agreement was effected, it was nothing more than a reduction to writing of the original oral agreement. That is what the Government disputes, I presume.

Mr. Milliken: Well, it is a reduction to writing of the partnership agreement in 1928.

By Mr. Milliken:

Q. Was it a reduction to writing of the

Exhibit G—(Continued)

understanding or agreement that had theretofore existed since April, 1923?

A. That was our intention, yes.

Q. I believe you testified that it did not change your manner of operations or anything one iota?

A. No sir."

The taxpayer set forth in Form 706, under Schedule "Other Miscellaneous Property", a statement indicating that the business relationship of Mr. and Mrs. Kammerdiner in the business of leasing rotary jars, but in the Federal Estate Tax Return stated that [33] decedent at time of death had no taxable interest in said business includable in her gross estate.

That heretofore and on the 10th day of May, 1938, claimant herein did duly pay to the Collector of Internal Revenue, 6th District, California, the said sum of $19,706.44 and interest thereon in the sum of $2,384.21, making a total tax and interest of $22,090.65, and has heretofore submitted proof of the 80 per cent credit for inheritance taxes paid.

ERROR 1

The Commissioner of Internal Revenue, having disregarded Exhibit "A" in determining tax liability, erred in including in the gross estate of the said Myrtle B. Kammerdiner any interest or value in the rotary jar business. This, by reason of the fact that the said James A. Kammerdiner did, in

Exhibit G—(Continued)

the year 1922, invent the said rotary jar and did, in the year 1922 or the year 1923 secure his original patent thereon in his own name. That title to said patent continued in his own name ever since the issuance thereof. That during all of said time the said James A. Kammerdiner was the sole owner of the patent and all other patents acquired.

It therefore follows, that if the Commissioner is not to determine tax liability under the agreement Exhibit "A", and is to disregard Exhibit "A" in the determination of the tax, then since title to Item One, "Other Miscellaneous Property", for which a value of decedent's interest was proposed at $175,000.00 under MT-ET-C1-8199-6th California, which stood in the sole [34] name of James A. Kammerdiner and was his sole property or expectant community property, therefore unless this property was changed by agreement between husband and wife, no part thereof should be included in the wife's gross estate.

ERROR 2

That the Commissioner determined a value on decedent's interest of $175,000.00 being one-half of the value of the said rotary jar business, together with the good will of said business, and rotary jar patents. That said Commissioner erred in assigning to the gross estate of decedent one-half of said rotary jar business. That the said Myrtle B. Kammerdiner at the time of her death had no

Exhibit G—(Continued)

interest in the rotary jar business other than that acquired under said Exhibit "A".

That although the Commissioner of Internal Revenue gave profound consideration to Exhibit "A" attached hereto in the audit of the income tax returns of Mr. and Mrs. Kammerdiner for the calendar year of 1928 and prior calendar years, inadequate, if any, consideration was given thereto in the matter of determining the Federal estate tax, and claimant avers that under said Exhibit "A" any interest which the said Myrtle B. Kammerdiner might have had in the said rotary jar business or the patents thereto ceased at her death and she did not at any time have an interest in the corpus of said business or in the patents owned by the said James A. Kammerdiner other than the expectant interest under the California law, which ceased at her death and was not transferred by reason thereof.

That an analysis of said Exhibit "A" definitely discloses that the business or property therein referred to was community property and said Exhibit "A" was entered into for the sole purpose of converting said community property into joint tenancy property with right of survivorship. [35]

Therefore, under Section 302 of the Revenue Act of 1926 (as amended by Section 404 of the Revenue Act of 1934) and Regulations 80 (1937 Edition) Article 23, exemption from tax is specifically allowed in relation to joint tenancies in property shown to have originally belonged to the surviving joint tenant and never to have belonged to the de-

Exhibit G—(Continued)

cedent. In the instant matter the agreement having been made on the 3rd day of January, 1928, and patents having issued prior to July 29, 1927, being the date when a wife in California was given a present and equal interest in the community property under Section 161 (a) of the California Civil Code, Section 161 (a) not being retroactive or affecting property owned at the time of its enactment, and the property referred to in said Exhibit "A" being expectant community property in which no vested interest in the wife existed, the husband was the original owner of all of said property and, therefore, was the creator of the joint tenancy under said Exhibit "A", at his wife's death, the wife not having contributed thereto anything of value and not under any circumstances having any vested interest in the rotary jar business or the patents, title to which stood in the husband's name, the Commissioner erroneously included in the decedent's estate any portion of the property or patents used in or belonging to the rotary jar business.

That an examination of said Exhibit "A" indicates that no property or anything of value was transferred by reason of the death of Mrs. Kammerdiner nor incident thereto. That Mr. Kammerdiner merely succeeded to the interest which formerly and prior to the execution of Exhibit "A" had vested in him, which former interest was community property, but expectant community property [36] and not community property in which his wife had a vested or fixed interest. The nature

Exhibit G—(Continued)

of the expectant interest of the wife is set forth in the case of Preston v. Commissioner, 35 B.T.A. 312 (Promulgated January 21, 1937).

In California, although a husband and wife, by reason of the provisions of Section 158 of the California Civil Code, may enter into engagements or transactions with each other and may also change the character of their property, the presumption always remains, which can only be rebutted by evidence, that property acquired after marriage is community property and applies not only to property acquired by either the husband or the wife separately "but to property acquired jointly."

Biggi v. Biggi, 98 Cal. 35;
Sventinich v. Sheean, 124 Cal. 216.

The interest of the wife being community property, she had no title or vested right therein during marriage. See U. S. v. Robbins, 269 U.S. 315.

By reason of the foregoing, even if the Commissioner is right in assuming that under Exhibit "A" Mrs. Kammerdiner acquired some right, title and interest in the physical assets of the business and/or patents, nevertheless, such assets or any interest therein could not be properly included in her gross estate since, under Exhibit "A", title would be held in joint tenancy, and since Mrs. Kammerdiner made no contribution to the joint tenancy no part thereof could, under the Regulations, be assigned to her estate.

ERROR 3

The Commissioner erred in assigning a value of

Exhibit G—(Continued)

$175,000.00 [37] to the interest of Mrs. Kammerdiner in the patents and the rotary jar business or assigning any value whatever thereto, but in the event that it should be determined that the Commissioner was correct in including in Mrs. Kammerdiner's gross estate a value on the patents and rotary jar business representing an interest which vested in her and which was transferred by reason of her death, then in that event claimant assigns as error the value determined as excessive and that the one-half interest which the Commissioner contends was owned by Mrs. Kammerdiner did not have a fair market value at the date of her death as determined by him of $175,000.00, but was of a fair market value of $100,000.00, and any value fixed over and above $100,000.00 on the interest of said decedent in said patents and rotary jar business was excessive.

That in support of this error reference is made to the affidavit of James A. Kammerdiner dated the 18th day of November, 1937, and letter of Messrs. Lyons and Lyons, signed by Henry S. Richmond, Esq., of date June 5, 1937, and of the protest dated March 9, 1937, by claimant filed with the Honorable Commissioner of Internal Revenue, Estate Tax Division, relative to the protestation of the deficiency tax as determined in the thirty-day letter in this matter.

Conclusion

That no probate proceedings have been taken in the Estate of Myrtle B. Kammerdiner, deceased,

Exhibit G—(Continued)

and no executor nor administrator has been appointed. That the said James A. Kammerdiner, as surviving joint tenant, did duly file in the Superior Court [38] of the State of California, in and for the County of Los Angeles, his petition to terminate the joint tenancies existing between himself and his wife, Myrtle B. Kammerdiner. That a hearing was held on said petition and a decree was duly entered terminating said joint tenancies. That the said James A. Kammerdiner filed Form 706 herein as surviving joint tenant and is claimant herein as taxpayer in his individual capacity and as surviving joint tenant, the said James A. Kammerdiner having personally paid the deficiency tax upon which this claim for refund is predicated.

CERTIFICATE

I hereby certify that the foregoing claim for refund was prepared by me for and on behalf of taxpayer; that the facts recited in said claim for refund are the exact facts as given to me by the taxpayer; and to the best of my knowledge and belief are true and correct.

Dated at Los Angeles, California, this 17 day of October, 1939. 3

(Signed) RALPH W. SMITH, with
CLAUDE I. PARKER and
RALPH W. SMITH,
808 Bank of America Building, Los Angeles, California.

Exhibit G—(Continued)

EXHIBIT "A"

The undersigned James A. Kammerdiner and Myrtle B. Kammerdiner, husband and wife, of Los Angeles, California, hereby state, declare and agree that the business of manufacturing, renting and selling Rotary Jars, heretofore conducted by them under the name of James A. Kammerdiner, at 237 South Highland Avenue, Los Angeles, California, all the assets of which business is [39] their community property, is now and all increase or change thereof shall be, their joint property with right of survivorship.

In Witness Whereof we have hereunto affixed our signatures at the City of Los Angeles, California, on the 3rd day of January, 1928.

JAMES A. KAMMERDINER,
MYRTLE B. KAMMERDINER.

State of California,
County of Los Angeles—ss.

On this 3rd day of January, 1928, before me Kimpton Ellis, a Notary Public in and for the said county of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared James A. Kammerdiner and Myrtle B. Kammerdiner, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

Exhibit G—(Continued)

In Witness Whereof, I have hereunto set my hand and affixed my official seal in said County the day and year in this certificate first above written.

(Seal) KIMPTON ELLIS,
Notary Public in and for said County of Los Angeles, State of California. [40]

EXHIBIT H

Treasury Department
Washington

Office of
Commissioner of
Internal Revenue

Feb. 2, 1940

Address Reply to
Commissioner of Internal Revenue
And Refer to
MT-ET-8199-6th California

Estate of Myrtle B. Kammerdiner
Date of Death—April 4, 1935

James A. Kemmerdiner, Individually and as
Surviving Joint Tenant of Myrtle B.
Kammerdiner, deceased,
808 Bank of America Building,
Los Angeles, California.

Sir:

Reference is made to the claim filed on July 7, 1939 and the amended claim filed on October 18,

1939, both for refund of $22,090.65, Federal estate tax and interest paid under the Revenue Act of 1934.

It is contended that item 1 under other miscellaneous property representing decedent's interest in a partnership determined at a value of $175,000.00 was unlawfully included and overvalued in the decedent's gross estate. The records of the bureau show that the value of decedent's interest was determined at $175,000.00 for the purpose of final adjustment, which adjustment was agreed to by the estate.

In view of the above and a further reconsideration of the evidence at hand there appears to be no reason to eliminate or reduce the value of the item under consideration. Accordingly, the claims filed by you on July 17, 1939 and October 18, 1939, for refund of $22,090.65, Federal estate tax and interest thereon are rejected in their entireties.

Respectfully,

GUY T. HELVERING,

Commissioner.

By D. S. BLISS,

Deputy Commissioner.

[Endorsed]: Filed Jun. 12, 1940. [41]

[Title of District Court and Cause.]

ANSWER

Comes now the defendant in the above-entitled action and, in answer to plaintiff's complaint herein, admits, denies and alleges:

I

Admits the allegations contained in Paragraph I thereof except that defendant denies that decedent left no estate and/or made no transfers of property other than joint tenancy property set forth in Form 706 referred to in plaintiff's complaint.

II

Admits each and every allegation of Paragraph II thereof.

III

Admits each and every allegation of Paragraph III thereof.

IV

Admits each and every allegation of Paragraph IV thereof.

V

Admits each and every allegation of Paragraph V thereof.

VI

Admits each and every allegation of Paragraph VI thereof.

VII

Admits each and every allegation of Paragraph VII thereof.

VIII

Admits each and every allegation of Paragraph VIII thereof. [42]

IX

Admits each and every allegation of Paragraph IX thereof.

X

Admits the allegations contained in Paragraph

X thereof except that defendant alleges that the estate tax payment therein referred to was made on the 10th day of May, 1938, instead of on the 18th day of March, 1938.

XI

Admits each and every allegation of Paragraph XI thereof.

XII

Admits the allegations in Paragraph XII thereof except that defendant denies that the subject of said agreement of January 3, 1928, was community property of the parties; and denies that by the terms of said agreement the said Rotary Jar business and assets was transferred into community property; denies that no part of said business and its assets was or is a proper part of decedent's gross estate for estate tax purposes; denies that decedent was not the original owner of any part thereof and/or any interest therein; denies that decedent's interest was not received for a valuable and/or adequate consideration; and denies that the Commissioner failed to give due consideration to the effect of said agreement in determining the federal estate tax payable herein.

XIII

(a) Defendant denies each and every allegation of Paragraph XIII(a) thereof.

In that connection defendant alleges that the undivided one-half of such Rotary Jar business and its assets, the value of which half was included in

decedent's gross estate, never originally belonged to her surviving husband and was never received or acquired by the latter from decedent for less than an adequate and full consideration in money or money's worth, nor otherwise by him received or acquired; and that the undivided half of said business and assets, the value of which was in- [43] cluded in decedent's gross estate, was at all times, and until her death, the sole and separate property of decedent.

(b) Defendant denies each and every allegation of Paragraph XIII(b) thereof.

In that connection defendant alleges that the patents and patent rights referred to in Paragraph XIII(b) at all times until decedent's death belonged to and were a part of the assets of said Rotary Jar business.

(c) Defendant denies each and every allegation of Paragraph XIII(c) thereof.

In that connection defendant alleges that the value of one half of said business, including stock on hand, goodwill, patents and patent rights, as of the date of death of decedent, was in excess of $175,000.00; that prior to the final assessment of the deficiency tax herein a controversy arose as to the amount of such valuation, the Commissioner contending that such value was far in excess of $175,000.00, and plaintiff contending that such value was substantially less than said sum; that for the purpose of settling such controversy the Commissioner and plaintiff agreed that such value in con-

nection with said proposed deficiency assessment should be taken as $175,000.00; that said agreed value was used by the Commissioner pursuant to and in reliance upon said agreement when computing and finally assessing said tax, and the amount of such deficiency tax was thereby correspondingly reduced; and that by virtue of such agreement, reliance and loss of revenue, plaintiff is estopped from now contending that such value was less than $175,000.00.

(d) Defendant denies each and every allegation of Paragraph XIII(d) thereof.

Further answering said Paragraph XIII, defendant denies that the Commissoner erroneously and/or illegally exacted any federal estate [44] tax from plaintiff, and denies that said taxpayer overpaid his federal estate tax in any amount whatever.

Second Defense

Further answering plaintiff's complaint and as a second and separate defense thereto, defendant alleges:

XIV.

That for the calendar years 1925, 1926 and 1927 the Commissioner of Internal Revenue determined income tax deficiencies against plaintiff in the sums of $4,220.70, $5,969.56 and $9,619.95 respectively; that the income which the Commissioner proposed to add to that reported by plaintiff in his tax return as his gross income for said years, and which he proposed to use in computing said tax deficien-

cies, was one-half of the net profits of the Rotary Jar business referred to in plaintiff's complaint; and that as the ground for such proposed deficiency assessments the Commissioner contended that 100% of said business and 100% of the income therefrom was community property of the type acquired by California spouses prior to July 29, 1927, and hence belonged solely to plaintiff.

That plaintiff thereupon contested said proposed deficiencies, and contended and represented to the Commissioner and the Treasury Department:

First, that he was not the sole owner of said patent, rotary jar business and income,

Second, that one-half thereof belonged to the decedent, his wife,

Third, that said patent rotary jar business was owned by him and his wife as equal partners, and

Fourth, that only one-half thereof belonged to him and that the other undivided one-half thereof belonged to the decedent, his wife, as [45] her sole and separate property.

That the Treasury Department was finally convinced of the truth of said representations, and the Commissioner acquiesced in such conviction and, in the belief that said representations were true,

First, the Commissioner failed to assess, and the Department failed to collect, said proposed deficiencies and interest thereon to the substantial loss of the Government treasury, and

Second, the Treasury Department failed to assess and collect from plaintiff income taxes attributable

to one-half of the net profits of said business for the years 1928 to 1935, inclusive, to the substantial loss of the Government.

That the time for the Government to assess and collect from plaintiff deficiency taxes for said years 1925 through 1935 is barred by limitations; that plaintiff is estopped from now contending herein that decedent, his wife, was never the sole and separate owner of said business and its assets; and that defendant is not withholding from plaintiff any funds which in equity and good conscience should be returned to him.

Third Defense

Further answering plaintiff's complaint and as a third and separate defense thereto, defendant alleges:

XV.

Defendant realleges and incorporates herein by reference each and all of the allegations contained in his Second Defense, Paragraph XIV above, the same as though set forth herein in full.

That incidental to and as an outgrowth of said income tax controversy between plaintiff and the Treasury Department relative to the years 1925, 1926 and 1927, plaintiff petitioned the United States Board of Tax Appeals for a redetermination of said deficiency proposed by the [46] Commissioner; that in his petitions plaintiff made his foregoing contentions and factual representations; that in his answers to said petitions the Commissioner denied said representations and made the said contentions urged by him as the ground for his said deficiency

determinations; that the issues thus made were tried and evidence was introduced in behalf of plaintiff and considered by the Board; that the trial of said issues resulted in findings of fact and a decision by the Board in favor of plaintiff; that the Board docket numbers of said petitions are 41643 and 46555, and that the decision of the Board is reported in 25 B.T.A. 495.

That in reliance upon said decision and the adjudications of law and fact therein made, the Commissioner did not appeal therefrom. The same became final as provided by law, and the Commissioner formally acquiesced therein (XI-2 C.B. 5).

That plaintiff is therefore estopped and barred from now raising in this action any of the said issues so decided and adjudicated by the Board; and that defendant is not withholding from plaintiff any funds which in equity and good conscience should be returned to him.

Wherefore, having fully answered, defendant prays that he be hence dismissed with his costs in this behalf expended.

WM. FLEET PALMER
United States Attorney
E. H. MITCHELL
Asst. United States Attorney
ARMOND MONROE JEWELL
Asst. United States Attorney
By E. H. MITCHELL
Attorneys for Defendant

[Endorsed]: Filed Oct. 5, 1940. [47]

[Title of District Court and Cause.]

MINUTE ORDER

This cause having been heard upon the issues raised by the Complaint and the Answer and evidence, oral and documentary, having been introduced, and the cause having been submitted to the court for decision, and the court having considered the law and the briefs of counsel, now finds in favor of the plaintiff and orders judgment ordering and decreeing that plaintiff do have and recover of and from the defendant the sum of $22,090.65, with interest thereon at the rate of six percent per annum, from May 10, 1938.

The court is of the view that at the time of Mrs. Kammerdiner's death, the property on which the tax was collected was held in joint tenancy by the plaintiff and his deceased wife.

The joint tenancy was created in 1928, confirming the oral agreement of 1923, out of the joint earnings of the spouses, which, prior to the law of 1927, as interpreted by the Supreme Court of California and the Supreme Court of the United States, were community property, belonging in its entirely to the husband.

No estoppel has been shown. The claim of partnership for certain years, in order to overcome the opposition of the Internal Revenue Bureau to the rights granted the wife under the community property law of California, does not create an estoppel. More, the Government did not [48] acquiesce in the claim or rely on it. It contested it before the Board

of Tax Appeals. That it failed to appeal after the Board decided in favor of the taxpayers does not amount to acquiescence and reliance.

A litigant who contests a claim before an administrative tribunal and loses cannot claim estoppel because he declined to pursue other remedies.

The Government's plea of res judicata is not sustained.

Hence the ruling made.

Findings and judgment to be prepared by counsel for the plaintiff under Local Rule 8.

Dated this 28th day of February, 1942.

Counsel notified. [49]

[Title of District Court and Cause.]

FINDINGS OF FACT, AND CONCLUSIONS OF LAW

The above entitled cause having come on regularly to be heard the 29th day of December, 1941, before the Honorable Leon R. Yankwich, Judge Presiding, sitting without a jury, a jury having been expressly waived, plaintiff appearing by his attorneys, Messrs. Claude I. Parker and Ralph W. Smith, by Ralph W. Smith and J. Everett Blum; defendant appearing by his attorney, E. H. Mitchell, and the matter having been heard up the issues raised by the complaint and the answer, and evidence both oral and documentary having been introduced, and the cause having been submitted to

the Court for decision and the Court having considered the facts and the law, and being fully advised in the premises, now makes its findings of fact as follows:

I.

It is true that on or about the fourth day of April, 1935, [50] Myrtle B. Kammerdiner died in the City of Los Angeles, State of California, but left no estate and made no transfers of property other than Joint Tenancy property set forth in Form 706 hereafter referred to. That she was at the time of her death a resident of the City of Los Angeles, State of California, Sixth District of California. That at the time of her death she owned certain real and personal property in joint tenancy with the plaintiff herein. That upon and by virtue of her death, said real and personal property so held by her in joint tenancy with plaintiff herein vested solely in plaintiff. That plaintiff is the surviving husband of said Myrtle B. Kammerdiner.

II.

All of the facts alleged in Paragraphs II, III, IV, V, VI, VII, VIII, IX, XI, of plaintiff's complaint, having been expressly admitted by defendant's answer, the Court generally finds each and every allegation in said paragraphs of said complaint to be true.

III.

It is true that on May 31, 1939, said Commissioner of Internal Revenue, after a final audit of the said estate tax return, issued a certificate of over-

assessment covering said $4,109.67, "Credit for State estate, inheritance, legacy or succession taxes", and interest thereon, leaving as the final redetermination of deficiency in said federal estate tax, $19,706.44, which said amount was, as stated in paragraph VIII of Plaintiff's complaint, paid in full by plaintiff on May 10, 1938, with all interest payable thereon to the said date of payment, total payment redetermined deficiency and interest, $22,090.65. A true copy of said certificate of overassessment of May 31, 1939 was introduced into evidence as Exhibit F.

IV.

It is true that on or about the seventeenth day of [51] October, 1939, the said plaintiff duly and regularly filed with the said defendant, as Collector of Internal Revenue of the United States for the Sixth District of California, for transmittal to the said Commissioner of Internal Revenue of the United States an amended claim for refund of federal estate tax erroneously and illegally assessed and collected in said matter in the said sum of $22,090.65, "(or such greater amount as is legally refundable)", and interest. Said amended claim was filed in substitution of said former claim filed as aforesaid on the 7th day of July, 1939. A true copy of said amended claim for refund was introduced into evidence as Exhibit G. That thereafter, said Commissioner of Internal Revenue, having audited said amended claim for refund, did find and determine that there had not been an overassess-

ment or overpayment of federal estate tax against or by plaintiff, individually or as such surviving joint tenant of the said Myrtle B. Kammerdiner, deceased, or the estate of said Myrtle B. Kammerdiner, deceased, in excess of the amount for which certificate of overassessment was, as stated in paragraph X of plaintiff's complaint, issued on May 31, 1939, and did therefore reject said claim for refund in its entirety by written rejection dated February 2, 1940. A true copy of said rejection in the form of a letter to plaintiff dated Febrruary 2, 1940, signed by D. S. Bliss, Deputy Commissioner of Internal Revenue was introduced into evidence as Exhibit H.

That the Commissioner of Internal Revenue in said letter of February 2, 1940, a true copy of which was introduced into evidence as Exhibit H, in referring to the interest of decedent in the rotary jar business included in the federal estate tax return, Form 706, as Item One of "Other Miscellaneous Property", states: "The records of the Bureau show that the value of decedent's interest was determined at $175,000.00 for the purpose of final adjustment, which adjustment was agreed to by the estate." That plaintiff denies that a final adjustment was at any time made or [52] agreed to in relation to the said federal estate tax or the determined tax deficiency. And in this connection, plaintiff alleges that on the third day of January, 1928, decedent and her husband, plaintiff herein, entered into an agreement in relation to the manu-

facture, renting, and selling of rotary jars; that the subject of said agreement was community property of the parties acquired prior to July 29, 1927, and is referred to in Item One of "Other Miscellaneous Property" in the federal estate tax return, Form 706. That a copy of said agreement was introduced into evidence as Exhibit A to and a part of the said Exhibit G, as aforesaid. That by the terms of said agreement, the said business and property therein referred to was joint tenancy property and, therefore, no part of it was or is a proper part of decedent's gross estate for estate tax purposes, for the reason that the decedent was not the original owner of any part thereof and any interest, if any, therein of the decedent was not received for a valuable or adequate consideration. That said Commissioner of Internal Revenue failed to give due consideration to the effect of said agreement in determining the federal estate tax payable herein.

V.

It is true that the Commissioner of Internal Revenue of the United States erroneously and illegally exacted from plaintiff federal estate tax in the following particulars, to wit:

(a) That the Commissioner of Internal Revenue erred in including in the gross estate of the said Myrtle B. Kammerdiner any interest or value in the rotary jar business, included in the federal estate tax return herein, Form 706, as Item One of "Other Miscellaneous Property";

(b) That the Commissioner of Internal Reve-

nue erred in including as an asset of said rotary jar business the patents issued to and owned by plaintiff and securing to him the sole right to manufacture said rotary jars. [53]

(c) That the Commissioner of Internal Revenue erred in finding that one-half of said rotary jar business, including rotary jars on hand, good will, and patents issued to and owned by plaintiff was of the value of $175,000.00, or of any value in excess of $160,000.00;

(d) That the Commissioner of Internal Revenue erred in finding that the said rotary jar business was not owned by decedent and plaintiff either as the community property of said spouses acquired prior to July 29, 1927 or in joint tenancy created out of such community property or out of such community property and property of decedent which had been given to her by plaintiff, and, therefore, not a part of her gross estate for federal estate tax purposes;

That by reason of the foregoing, said taxpayer overpaid his federal estate tax in the amount of $22,090.65.

VI.

It is true that the interest of Myrtle B. Kammerdiner, deceased, in the business and assets of the Kammerdiner Rotary Jar Company, and referred to in said agreement of January 3, 1928, at the time of her death was a joint tenancy interest with her husband, James A. Kammerdiner, which joint tenancy was created out of the joint earnings of the

spouses earned after their marriage and while domiciled in the State of California, and prior to July 29, 1927; that James A. Kammerdiner originally owned all of the property, which later was invested in and entered into said joint tenancy property, and decedent, Myrtle B. Kammerdiner, received no interest in said joint tenancy from the said James A. Kammerdiner for a valuable or adequate consideration, but the whole of her interest therein was received by her from the said James A. Kammerdiner by gift, without any consideration whatsoever, valuable, adequate, or otherwise. [54]

VII.

Each and every allegation contained in Paragraphs I to XIII, inclusive, of defendant's answer which is in conflict with the facts as hereinbefore found, is untrue.

VIII.

It is true that for the calendar years 1925, 1926, and 1927 the Commissioner of Internal Revenue determined income tax deficiencies against plaintiff in the sums of $4,220.70, $5,969.56 and $9,619.95, respectively; that the income which the Commissioner proposed to add to that reported by plaintiff in his tax return as his gross income for said years, and which he proposed to use in computing said tax deficiencies, was one-half of the net profits of the Rotary Jar business referred to in plaintiff's complaint; and that as the ground for such proposed deficiency assessments the Commissioner contended that 100 per cent of said business and 100 per cent of the income therefrom was community

property of the type acquired by California spouses prior to July 29, 1927, and hence belonged solely to plaintiff.

That plaintiff thereupon contested said proposed deficiencies, and contended and represented to the Commissioner and the Treasury Department:

First, that he was not the sole owner of said patent, rotary jar business, and income,

Second, that one-half thereof belonged to the decedent, his wife,

Third, that said patent rotary jar business was owned by him and his wife as equal partners, and

Fourth, that only one-half thereof belonged to him and that the other undivided one-half thereof belonged to decedent, his wife, as her sole and separate property.

IX.

It is not true that the Treasury Department was finally [55] convinced of the truth of said representations, and the Commissioner acquiesced in such conviction, in the belief that said representations were true. On the contrary, it is true that the Treasury Department did not acquiesce in such conviction and did not believe that said representations were true.

X.

It is not true that the Commissioner failed to assess and the Treasury Department failed to collect said proposed deficiencies and interest thereon to the substantial loss of the Government Treasury, either for the years 1925, to 1927, inclusive, or for the years 1928 to 1935, inclusive.

XI.

It is true that during the years 1925 to 1935, inclusive, the said Myrtle B. Kammerdiner, deceased, and the said James A. Kammerdiner did each report one-half of the income received from said Kammerdiner Rotary Jar business on their respective separate income tax returns filed with the Bureau of Internal Revenue.

XII.

It is true that plaintiff is not estopped from now contending that no part of said Kammerdiner Rotary Jar business or its assets is includable in the gross estate of Myrtle B. Kammerdiner for federal estate tax purposes.

XIII.

It is true that defendant is withholding from plaintiff funds which in equity and good conscience should be returned to him.

XIV.

It is true that for the years 1925, 1926, and 1927 James A. Kammerdiner petitioned the United States Board of Tax Appeals for a redetermination of deficiencies proposed by the Commissioner against him, which proposed deficiencies were predicated upon taxing 100 per cent of the income of the Kammerdiner Rotary Jar business to James A. Kammerdiner; that the Commissioner denied [56] the allegations of said James A. Kammerdiner before the said Board of Tax Appeals; that upon trial of said matter before the Board of Tax

Appeals, the Board of Tax Appeals decided in favor of James A. Kammerdiner;

It is true that the Commissioner did not appeal from the said decision rendered by the said Board of Tax Appeals.

It is true that said decision of said Board of Tax Appeals became final, as provided by law, and the Commissioner of Internal Revenue formally acquiesced therein.

XV.

It is not true that plaintiff is estopped and barred from now contending that no part of said Kammerdiner Rotary Jar business, or the assets thereof, are includable in the gross estate of Myrtle B. Kammerdiner for federal estate tax purposes.

XVI.

It is true that the issues tried before the Board of Tax Appeals for the years 1925, 1926, and 1927, in respect to the proposed income tax deficiencies against the said James A. Kammerdiner were whether or not for the years 1925, 1926, and 1927 said James A. Kammerdiner and Myrtle B. Kammerdiner were operating the said Kammerdiner Rotary Jar business in such manner that the income received therefrom was reportable by them one-half thereof in the separate income tax return of Myrtle B. Kammerdiner and one-half thereof in the separate income tax return of James A. Kammerdiner, filed for each of said years 1925, 1926, and 1927.

XVII

It is true that beginning with at least the year 1929 the Commissioner of Internal Revenue refused to recognize that the said Myrtle B. Kammerdiner and the said James A. Kammerdiner owned or operated the said Kammerdiner Rotary Jar business or its assets as partners, but, on the contrary, found, determined, and agreed that the said James A. Kammerdiner and the said Myrtle B. Kammerdiner [57] ever since January 3, 1928, owned and operated the said Kammerdiner Rotary Jar business and its assets as joint tenants, with right of survivorship.

XVIII

It is true that the fair market value of one-half of the Kammerdiner Rotary Jar business and its assets on the date of death of the said Myrtle B. Kammerdiner was one hundred sixty thousand dollars ($160,000.00).

CONCLUSIONS OF LAW

And as conclusions of law from the foregoing facts, the Court finds:

I

That Myrtle B. Kammerdiner and James A. Kammerdiner owned the Kammerdiner Rotary Jar business and the assets thereof as joint tenants with the right of survivorship.

II

That the property which was invested in or en-

tered into the creation of said joint tenancy property, referred to in Conclusion I hereof, was all contributed to said joint tenancy by James A. Kammerdiner, and no part thereof was contributed to said joint tenancy by Myrtle B. Kammerdiner.

III

That plaintiff is not estopped or barred from contending in this action that no part of said Kammerdiner Rotary Jar business or its assets is includable in the gross estate of Myrtle B. Kammerdiner for federal estate tax purposes.

IV

That plaintiff is entitled to judgment, ordering and decreeing that plaintiff do have and recover of and from the defendant the sum of twenty-two thousand ninety dollars and sixty-five cents ($22,-090.65), with interest thereon at the rate of [58] six per cent (6%) per annum from the 10th day of May, 1938.

Judgment is hereby ordered to be entered accordingly.

Dated this 15th day of July, 1942.

LEON R. YANKWICH,
Judge of the above entitled Court.

Approved as to Form, this day of, 1942.

WM. FLEET PALMER,
United States Attorney.
E. H. MITCHELL,
Asst. United States Attorney.
ARMOND MONROE JEWELL,
Asst. United States Attorney.
Attorneys for Defendant.

[Endorsed]: Filed Jul. 15, 1942. [59]

In the District Court of the United States in and for the Southern District of California, Central Division.

No. 995-B
Civil

JAMES A. KAMMERDINER, Individually, and as Surviving Joint Tenant of Myrtle B. Kammerdiner, Deceased,

Plaintiff,

vs.

NAT ROGAN, Collector of Internal Revenue of the Sixth District of California,

Defendant.

JUDGMENT

The above entitled cause having come on regularly to be heard the 29th day of December, 1941, before the Honorable Leon R. Yankwich, Judge presiding, sitting without a jury, a jury having been expressly waived, plaintiff appearing by his attor-

neys, Messrs. Claude I. Parker and Ralph W. Smith, by Ralph W. Smith and J. Everett Blum, defendant appearing by his attorney, E. H. Mitchell, Esq., and the matter having been heard upon the issues raised by the complaint and the answer, and evidence both oral and documentary having been introduced and the cause having been submitted to the Court for decision, and the Court having made its findings of fact and conclusions of law, after due deliberation,

Now, Therefore, It Is Hereby Ordered, Adjudged, and Decreed that plaintiff have judgment against defendant in the sum of [61] twenty-two thousand ninety dollars and sixty-five cents ($22,090.65), together with interest thereon at the rate of six per cent (6%) per annum from the 10th day of May, 1938;

It Is Further Ordered, Adjudged, and Decreed that plaintiff recover his costs in the sum of

Done this 15th day of July, 1942.

LEON R. YANKWICH,
Judge of the above entitled Court.

Approved as to Form, this 6th day of July, 1942.

WM. FLEET PALMER,
United States Attorney.
E. H. MITCHELL,
Asst. United States Attorney.
ARMOND MONROE JEWELL,
Asst. United States Attorney.
By E. H. MITCHELL,
Attorneys for Defendant.

Judgment entered Jul. 15, 1942.
Docketed Jul. 15, 1942.
C. O. Book 10, Page 366.

EDMUND L. SMITH,
Clerk.
By LOUIS J. SOMERS,
Deputy.

[Endorsed]: Filed Jul. 15, 1942. [62]

[Title of District Court and Cause.]

DEFENDANT'S MOTION FOR NEW TRIAL AND TO AMEND AND ADD FINDINGS AND CONCLUSIONS (RULES 52(b) AND 59(a) (2).)

Defendant respectfully shows to the Court:

The Issues in Chief.

The chief issues raised by the pleadings in this estate tax case are:

1st. Whether more than half of the 1935 assets of the spouses' joint tenancy Rotary Jar business "originally belonged" to the surviving husband, and

2d. If so, whether with business services, or [63] otherwise, decedent paid for all or a portion of her joint half any consideration in money or money's worth.

The fact that such assets were owned by the

spouses at the time of the wife's death as joint tenants raised the question as stated above. (Sec. 302(e), Revenue Act of 1926, as amended in 1934.)

There was thus cast upon the plaintiff the difficult burden of establishing by clear and convincing evidence (in order to bring himself within a statutory exception to the general rule) either (1st) that none of the assets of the joint tenancy business "originally belonged" to the decedent wife, on (2d) that her joint interest was acquired from her husband for less than an adequate and full consideration in money or money's worth, and the extent, if any, of such inadequacy.

The trial court has found, as alleged by plaintiff (Complaint, Par. XII, p. 6, lines 23 and 24), that each and every asset belonging to the business in 1935 (the date of death), both tangible and intangible, was originally California community property of the type acquired before 1927; that it, therefore, "originally belonged" to the husband to the extent of 100% thereof; that no part or portion of any of such assets ever "originally belonged" to the wife; and that no part or portion of decedent's 1935 joint tenancy interest was acquired by her for "a valuable or adequate consideration"; that is, that the promised services contributed to the business by the wife were either valueless or were pure gifts by her to her husband.

Defendant admitted that the written agreement of 1928 transformed the assets of said business into

joint tenancy property (Answer, Par. XII, p. 2, line 11), but (1st), expressly denied that such assets, prior to the 1928 agreement, were community property (idem., Par. XII, p. 2, lines 12 and 13), and (2d), expressly denied that the wife's half was not originally acquired by her for a valuable and/or adequate consideration (idem., lines 18 and 19). [64]

The identical issue was raised by Paragraphs XIII (d) of the Complaint and Answer.

In his opening and closing briefs, plaintiff relied exclusively upon the contention that each asset of the business, at the time of death (1935), was through all its transmutations clearly traceable to old-type community property. Defendant's chief contention was that plaintiff had not clearly established that the 1935 assets of the business were not traceable to an original co-ownership by the spouses either as partners, joint adventurers, tenants in common or joint tenants. (See, for example, Defendant's Brief, p. 27, lines 15-17; p. 10, lines 4-24; p. 12, lines 25-32; p. 13, lines 6-8; p. 15, lines 10-13, and lines 21-32; p. 17, line 12, and lines 15-25; and p. 21, line 7 to p. 23, line 11.)

Error No. 1.

Insofar as concerns the ultimate question of "original" co-ownership, the Court has erroneously held (Finding IV, p. 4, lines 5-7) that under the record at hand the plaintiff, by clear and convincing evidence, traced each of the 1935 assets of the business back to old-type community property.

Were the record silent concerning the conduct,

declarations and unusual agreements of the spouses, prior to the written joint tenancy contract of January 3, 1928 (Plaintiff's Ex. 9), such decision of the Court might be justified. Agreements are not necessary to the creation of community property. Like dower, it is a creature of law and is seldom founded on contract. Plaintiff does not contend that any community property here resulted from an agreement, and we have in this case no evidence whatever of a "community property" agreement. Hence, the Court's finding that 100% of the joint tenancy property was clearly traced to old-type community property cannot stand without first finding that the written joint tenancy agreement of 1928 was not only the first, but was the only, agreement respecting [65] property or earnings ever entered into by the spouses.

In the face of the uncontradicted testimony of the plaintiff and the numerous uncontradicted oral and written admissions and declarations of both spouses concerning "co-ownership" (Azevedo v. Sequeira, 132 C. A. 439, 22 P. (2) 745) and the actual existence of a "co-ownership" agreement dating from the time of their marriage, it is difficult to see how the Court's contrary finding can stand. The overwhelming and uncontradicted evidence to which we refer is summarized on pp. 11 to 23 of defendant's brief and need not be here repeated. Suffice to say that it establishes beyond question that the spouses entered into an oral property and earnings "co-ownership" contract of some type

shortly after the 1908 marriage, and that it, or some other type of "co-ownership" relationship, continued in force until the wife's death.

The agreement or agreements necessarily created either joint business ventures or business partnerships or both; relationships which were then entirely foreign to most marriages. The uncontradicted evidence of conduct throughout marriage likewise shows that each spouse contributed personal services to their joint enterprises, and that all assets thereof and income therefrom were owned by them in equal proportions.

Such evidence does not support a finding of normal, sole ownership by a California husband of old-type community property, a type of property relationship which arises without agreement and without the actual performance of even one household duty by the wife.

Error No. 2.

The second set of erroneous findings are to the effect that none of the decedent's 1935 joint tenancy interest in the several assets of the jar business was acquired by her for an adequate or full consideration in money or money's worth; that is, that she received her interest as a pure "gift" from her husband. (Finding IV, p. 4, lines [66] 15-17; and Finding VI, p. 5, lines 26-31.)

There is no evidence to support such findings. Without contradiction the record establishes the extra-marital business activities of the wife during the six years between 1909 and 1915. (Defendant's

Brief, p. 13, lines 14-28.) The earnings of each spouse on the Brae Lease were placed in a single joint account; "a 50-50 split" was made pursuant to an agreement between the spouses, which agreement was the same as the partnership or joint-adventure agreement of 1923. (Tr. pp. 31-33.) In 1923 the wife's one-half share of this joint account exceeded $3,000.00 (Tr., p. 17), and a portion of it was then invested in the infant Rotary Jar business. (Defendant's Ex. 16, pp. 8, 35, 37, 51 and 71.)

Later and during the last twelve years of her life (1923-1935) decedent worked full time in the Rotary Jar business, not for pleasure or as a gift to her husband, but pursuant to a contract with him relating "to the marketing, sale and ownership of this patent . . . it was decided" that the husband would do the field work and "she would do the office work", and profits, if any, would be divided between them. (Defendant's Ex. 16, p. 11.) The husband needed a business partner (idem., p. 15), not a mere housewife. The agreement related "to all the rights" then owned and "all the rights" which might be thereafter acquired "in the patent, or to the patent, or to the rights". (Idem., pp. 43-44.) The agreement related "to what rights" each spouse should have. Each was "to take a share alike, fifty-fifty". (Idem., pp. 53-54.) Under the agreement both were to "work in the business" and in consideration thereof the wife was to receive an "interest in one-half of property and income . . . ". (Defendant's Exs. 19, 20, 21; and 14-(b),

15, 17 and 18.) The foregoing evidence is uncontradicted.

Some of the valuable services rendered the jar business by the wife over the 12-year period are listed in defendant's brief, p. 18, lines 11 to 24, and p. 19, line 8 to p. 20, line 12. Such are not the domestic services for which California wives were, in theory, rewarded [67] with expectant interests in old-type community property. Mrs. Kammerdiner's services were extraordinary, were of actual value to the business, and were rendered unquestionably pursuant to an express contract with her husband. Since they were not "domestic services which are incidental to the marital status", the plaintiff's agreement to compensate his wife therefor is not void as against public policy. Moore v. Crandall (C.C.A. 9th), 205 Fed. 689, construing the California law; and Re Cox (D.C.), 199 Fed. 952, which arose in New Mexico. Cf. Brooks v. Brooks (Cal. App. .. 1941), 48 A. C. A. 397 (2b), 399, 119 P. (2) 970 (3), 972.)

"The services of a wife may be recognized as a consideration (within the meaning of Sec. 302 (e) of the 1926 Act) where there is an understanding between husband and wife that they should be a partial contribution to her equal share in all property acquired."

Randolph E. Paul (1942), Federal Estate & Gift Taxation, Vol. 1, p. 405.

Let us now assume that the oral Rotary Jar business agreement of 1923 created between plaintiff

and his wife the relationship of employer and employee, respectively, instead of that of partners or joint adventurers; and that decedent's joint tenancy interest was received as mere compensation for services rendered by her pursuant to such contract of employment. Upon the record, this assumption is the most favorable to the plaintiff. Can it be reasonably said that such compensation was paid to her without a valuable consideration? The answer to this question may also be found in Moore v. Crandall, In re Cox, and Brooks v. Brooks, cited supra.

Whether the 1923 agreement created the relationship of joint adventurers, partners, or employer and employee, it admittedly required the contribution of valuable services by the wife, which services were actually rendered, and for which services, pursuant to the same contract, decedent was rewarded with her ultimate joint tenancy half interest. The value of such interest was therefore includable [68] in her gross estate.

Randolph E. Paul, supra;
Richardson v. Helvering (App. D. C.), 80 F. (2d) 548; and
Estate of Lester L. Fletcher (1941), 44 B.T. A. 429, No. 70.

There is no evidence, substantial or otherwise, to support the finding that the whole of decedent's 1935 joint tenancy interest in the business was received from plaintiff "by gift". (Finding VI, p.

5, lines 28-30.) In fact, the evidence is directly to the contrary.

The trial court's implied finding that none of the 1935 assets of the Rotary Jar business was attributable to the valuable services of the decedent is just as clearly erroneous as is its implied finding that all of such 1935 assets, including good will, were attributable solely to the husband's services and/or the basic patent.

In this latter connection it is to be borne in mind that the patent rights were used by the business enterprise, and by no one else, continuously from 1923 until the wife's death in 1935, pursuant to an express agreement to that effect. The firm therefore was at all times the equitable or beneficial owner of all such rights. While the legal title to the patent stood in plaintiff's name, he held such title in trust for the enterprise or firm, which firm or enterprise was at all times the real owner.

Hill v. Miller, 78 Cal. 149, 20 P. 304.

This rule applies to all property, real or personal, used by a partnership.

Bastjan v. Bastjan (1932), 215 Cal. 662, 12 P.(2) 627(4), 629;

Perelli-Minetti v. Lawson, 205 Cal. 642, 272 P. 573; and

Lamb v. Hall, 147 Cal. 37, 81 P. 286. [69]

But even had plaintiff been at all times the sole owner of the patent and patent rights, it must also be borne in mind that the value of these patent rights was purely speculative until 1924 after nearly

a year's contracted services had been expended by the two spouses in commercially exploiting them (Tr. pp. 19, 46 and 47), and that some $85,000 of the admittedly co-owned joint-tenancy, tenancy in common or partnership income was invested in protective patents prior to the wife's death. (Tr., p. 82, line 20 to p. 85, line 25.) It would be wholly unreasonable to say that the subsequent great value of the firm's rights under the patent and the later substantial profits of the business were, to the extent of 100%, attributable solely to the original basic patent, and that no proportion whatever thereof can be attributed to the services of, and the management of the business by, the wife.

Noteworthy also is the fact that the plaintiff made no effort whatever to establish the proportion of the 1935 values which was attributable to original capital and the proportion thereof attributable to services.

Since the taxpayer failed to present any evidence tending to prove the valuelessness of the wife's promised business services, there is nothing to support the trial court's implied findings to the effect that such services had no value or that they were a gift to her husband. (Cf. Rogan v. Riggle (1942-C.C.A. 9th), 182 F.(2d) 118 (3), 120.)

Error No. 3.

There is no evidence to support the finding to the effect that the patent rights were owned by plaintiff only, to the effect that the patents secured to him the sole right to manufacture said rotary

jars, and to the effect that the patents or rights thereunder were not assets of the rotary jar business. (Finding V (b), p. 4, lines 29-32.) [70]

Error No. 4.

There is no evidence to support the trial court's Findings IX, X, XII and XIII.

Error No. 5.

There is no evidence to support the trial court's Findings XV and XVII.

Error No. 6.

Conclusion I is incomplete, since it fails to specify the date that the spouses commenced to own the jar business and the assets and income thereof as joint tenants. Such date is essential to the Court's decision and should be expressly found.

Error No. 7.

Conclusions II and III are not supported by the findings, by the evidence, or by the law.

Error No. 8.

In his Third Defense to plaintiff's complaint, defendant, on pages 5 and 6 of his answer, affirmatively alleged that the following issues of fact were involved, and were tried and decided by the Board of Tax Appeals, in the case of J. Kammerdiner v. Commissioner, 25 B.T.A. 495, to wit:

1st. Whether in the year 1925 the property and income of the Rotary Jar business was community property.

2d. Whether in the year 1925 plaintiff was the sole owner of the patent, the Rotary Jar business and its income;

3d. Whether in the year 1925 an undivided one-half of such patent, business and income belonged to his wife;

4th. Whether in said year the assets and income of said business were owned by plaintiff and his wife as equal partners; and [71]

5th. Whether in said year one-half thereof belonged to the decedent wife.

In response to such allegations (issues in this case) the trial court has made no findings or conclusions whatever.

Since they are the most material facts alleged by defendant in support of his defense of res adjudicata, defendant feels that he is entitled to specific findings thereon, and respectfully requests that they, whether affirmative or negative, be made by the Court at this time.

Error No. 9.

The issues of fact and law, set forth below, are vital and material in this case and have been raised and presented to the trial court for decision. The Findings and Conclusions are silent in respect of these issues. In the event of appeal, a reviewing court would find it most difficult to determine the many and complicated reasons and grounds upon which the judgment may have been based. For these reasons, and because the defendant is entitled to express findings and conclusions in response to such issues (Rule 52(a)), it is respectfully requested that the trial court now expressly make special findings or conclusions, either affirmative or negative, upon the following questions, to wit:

(a) Whether the personal services contributed by the wife to the jar business were valueless.

(b) Whether the wife contributed her services to the jar business pursuant to an understanding or agreement with her husband, and, if so, a finding as to the terms of such understanding or agreement.

(c) Whether the services contributed by the wife to the business were, in fact, a gift to her husband.

(d) Whether such services were domestic and "incidental to the [72] marital status".

(e) A conclusion as to whether "the decedent (wife) contributed toward the acquisition of" her 1935 joint tenancy interest in the business, within the meaning of Art. 22 of Regulations 80 (1934 Ed.).

(f) A conclusion as to whether the outlay by the spouses of some $85,000 of joint tenancy funds for protective patents constituted "an outlay of funds, which, in the first instance, were decedent's own", within the meaning of Art. 23 of Regulations 80 (1934 Ed.).

(g) A conclusion as to whether the decedent (wife) "furnished a part only of the purchase price" in the acquisition of any of the assets of the joint tenancy business, within the meaning of Art. 23(b) of Regulations 80 (1934 Ed.), and, if so, a finding specifying the particular assets in the purchase of which she furnished a part of the purchase price and the exact proportion thereof furnished by her.

Defendant moves that an order be entered herein granting the defendant a new trial because of the errors specified above. Defendant further moves that the findings and conclusions of the Court be now amended, for the reasons and in the particulars above set forth, and that the Court now make additional findings and conclusions requested supra upon the foregoing issues of law and fact.

This motion will be made upon the pleadings, Reporter's Transcript, exhibits, briefs, and the Findings and Conclusions, on file in this case, and upon the foregoing points and authorities.

Dated: July 22, 1942.

WM. FLEET PALMER,
United States Attorney.
E. H. MITCHELL,
Assistant United States Attorney.
By E. H. MITCHELL,
Assistant United States Attorney,
Attorneys for Defendant.

[Endorsed]: Filed Jul. 22, 1942. [73]

[Title of District Court and Cause.]

NOTICE OF HEARING

To: James A. Kammerdiner, Plaintiff, and Claude I. Parker, Ralph W. Smith, W. H. Gentry and J. Everett Blum, His Attorneys:

You and Each of You Will Please Take Notice that the defendant will call for hearing his Motion for New Trial and to Amend and Add Findings and Conclusions under Rules 52(b) and 59(a)(2) at 10:00 o'clock, A. M., on Monday, the 3d day of August, 1942, or as soon thereafter as counsel can be heard, in Courtroom No. 5, before the Honorable Leon R. Yankwich, in the Post Office and Court House Building on Spring and Temple Streets in the City of Los Angeles, [74] California.

Dated: July 22, 1942.

WM. FLEET PALMER,
United States Attorney.
E. H. MITCHELL,
Assistant United States Attorney.
By E. H. MITCHELL,
Assistant United States Attorney,
Attorneys for Defendant.

[Endorsed]: Filed Jul. 22, 1942. [75]

At a stated term, to wit: The February Term, A. D. 1942, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday the 5th day of August in the year of our Lord one thousand nine hundred and forty-two.

Present:

The Honorable: Leon R. Yankwich, District Judge.

[Title of Cause.]

This cause now coming before the Court, it is ordered that motion for a new trial, heretofore submitted, be, and it hereby is, denied, and that the motion of the defendant to amend and add findings and conclusions be, and it hereby is, denied. [76]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To: James A. Kammerdiner, Plaintiff, and Claude I. Parker, Ralph W. Smith, W. H. Gentry and J. Everett Blum, His Attorneys:

Notice is Hereby Given that Nat Rogan, as Collector of Internal Revenue for the Sixth Collection District of California, the Defendant above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action on July 15, 1942.

Dated: October 20, 1942.

LEO V. SILVERSTEIN,
United States Attorney.
E. H. MITCHELL,
Assistant United States Attorney.
By E. H. MITCHELL,
Attorneys for Defendant-Appellant.

[Endorsed]: Filed and mld. copy to attys. for plf. Oct. 20, 1942. [77]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET CAUSE ON APPEAL.

Upon motion of Defendant-Appellant, and good cause appearing therefor:

It Is Hereby Ordered that the time within which to file the record and docket the above-entitled cause in the United States Circuit Court of Appeals for the Ninth Circuit be, and the same hereby is, extended to and including the 17th day of January, 1943.

Dated this 25th day of November, 1942.

LEON R. YANKWICH,
United States District Judge.

[Endorsed]: Filed Nov. 25, 1942. [78]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET CAUSE ON APPEAL

Upon motion of Defendant-Appellant, and good cause appearing therefor:

It Is Hereby Ordered that the time within which to file the record and docket the above-entitled cause in the United States Circuit Court of Appeals for the Ninth Circuit be, and the same hereby is, extended to and including the 18th day of January, 1943.

Dated this 12th day of January, 1943.

LEON R. YANKWICH,
United States District Judge.

[Endorsed]: Filed Jan. 12, 1943. [79]

[Title of District Court and Cause.]

STIPULATION RE RECORD ON APPEAL

Whereas, the defendant in the above-entitled action has taken an appeal from the judgment in this case to the United States Circuit Court of Appeals for the Ninth Circuit, and the record therein consists, among other things, of 55 written exhibits that were introduced in evidence by the parties; and

Whereas, it is the desire of the parties hereto, in order to save the time, labor and expense of making photostatic copies, to facilitate printing and to permit inspection by the Appellate Court of the

originals, that said original documents be sent to the said Court in lieu of copies;

Now, Therefore, It Is Hereby Stipulated and Agreed, by and between the parties, through their respective counsel undersigned, that the originals of all plaintiff's Exhibits, and defendant's Exhibits Nos. 1 to 36, inclusive, be sent to the Appellate Court in lieu of copies. [80]

Dated: January 13, 1943.

LEO V. SILVERSTEIN,
United States Attorney.
E. H. MITCHELL,
Assistant United States Attorney.
By E. H. MITCHELL,
Attorneys for Defendant-Appellant.

CLAUDE I. PARKER,
RALPH W. SMITH,
JOHN MOORE ROBINSON,
By RALPH W. SMITH,
Attorneys for Plaintiff-Appellee.

It is so ordered this 14th day of January, 1943.

LEON R. YANKWICH,
Judge of the District Court.

[Endorsed]: Filed Jan. 14, 1943. [81]

[Title of District Court and Cause.]

DEFENDANT'S DESIGNATION OF CONTENTS OF RECORD ON APPEAL

Defendant and appellant requests that the complete record and all the proceedings and evidence in the above-entitled action be incorporated in the record on appeal, including the following:—

1. Plaintiff's complaint.
2. Defendant's answer.
3. Reporter's transcript of proceedings of December 29, 1941.
4. All of the Plaintiff's Exhibits numbered 1 to 18, inclusive.
5. All of the Defendant's Exhibits numbered 1 to 37, inclusive.
6. The trial court's minute order of February 28, 1942, ordering findings, conclusion and judgment in favor of the plaintiff.
7. Findings of fact and conclusions of law, dated and filed July 15, 1942.
8. Judgment dated and entered July 15, 1942.

[82]

9. Defendant's motion for new trial and to amend and add findings and conclusions, dated and filed July 22, 1942.
10. Notice of hearing said motion (No. 9 above), dated and filed July 22, 1942.
11. Minute order of Judge Yankwich, dated and entered August 5, 1942, denying defendant's said motion, No. 9 above.

12. Notice of appeal by defendant, dated and filed October 20, 1942.

13. Order extending time to docket cause on appeal, dated and filed November 25, 1942.

14. Order extending time to January 18, 1943, to docket cause on appeal, dated and filed January 12, 1943.

15. This designation of portions of the record to be contained in the record on appeal.

Dated: January 12, 1943.

LEO V. SILVERSTEIN,
United States Attorney.
E. H. MITCHELL,
Assistant United States Attorney.
By E. H. MITCHELL,
Attorneys for Defendant-Appellant.

[Endorsed]: Filed Jan. 12, 1943. [83]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO TRANSCRIPT OF RECORD

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify the foregoing pages, numbered from 1 to 83, inclusive, contain full, true and correct copies of Complaint; Answer; Minute Order of February 28, 1942; Findings of Fact and Conclusions of Law; Judgment; Defendant's Motion for New Trial and to Amend and Add Findings and Conclusions; Notice of Hearing; Minute Order of August 5, 1942; Notice of Appeal; two Orders Extending Time to Docket Cause on Appeal; Stipulation re Record on Appeal; and Designation of Contents of Record on Appeal, which together with Reporter's Transcript of Testimony and original exhibits transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

Witness my hand and the Seal of the District Court of the United States for the Southern District of California, this 16 day of January, A. D. 1943.

(Seal) EDMUND L. SMITH,
Clerk.
By THEODORE HOCKE,
Deputy Clerk.

[Title of District Court and Cause.]

TRANSCRIPT OF PROCEEDINGS

Los Angeles, California
Monday, December 29, 1941
10:00 o'clock a. m. [2*]

The Court: All right. Proceed.

What is the entire amount involved, or has it been computed?

Mr. Smith: $22,090.65.

If your Honor please, it appears from the answer that the Exhibits to our complaint are admitted, and we therefore offer this in evidence.

Mr. Mitchell: We admit that they are correct copies.

The Court: You had better take them one by one.

Mr. Smith: We will offer them in evidence.

The Court: Perhaps the Government has photostatic copies of those things.

Mr. Mitchell: No, your Honor. I may have one of them.

The Court: Let's take them one by one.

Mr. Smith: We will offer now our Exhibit A.

Mr. Mitchell: Just a moment. Let me refresh my memory.

The Court: Exhibit A is the letter from the Treasury Department dated January 18th, 1937.

Mr. Mitchell: No objection. That is a correct copy.

*Page numbering appearing at top of page of original Reporter's Transcript.

The Court: Exhibit A of the complaint is received by reference as Plaintiff's Exhibit 1.

(The document referred to was received by reference as "Plaintiff's Exhibit No. 1".)

[Plaintiff's Exhibit No. 1 is set out as Exhibit A of the complaint, on page 12 of this record.]

Mr. Smith: Next we will offer, if your Honor please, [7] our Exhibit B.

The Court: Exhibit B is also from the Treasury Department, Office of the Commissioner of Internal Revenue, and is dated November 10th, 1937.

The Clerk: Plaintiff's 2.

Mr. Mitchell: No objection.

The Court: It will be received as Plaintiff's 2.

(The document referred to was received in evidence and marked "Plaintiff's Exhibit No. 2.")

[Plaintiff's Exhibit No. 2 is set out as Exhibit B of the complaint, on page 17 of this record.]

The Court: Exhibit C is received as Plaintiff's 3, the letter of January 26th, 1938.

Mr. Mitchell: No objection.

(The document referred to was received in evidence and marked "Plaintiff's Exhibit No. 3.")

[Plaintiff's Exhibit No. 3 is set out as Exhibit C of the complaint, on page 20 of this record.]

Mr. Smith: We offer Exhibit D as our next.

The Court: Exhibit D will be Plaintiff's 4.

Mr. Mitchell: No objection.

The Court: It is the letter of March 18th, 1938.

(The document referred to was received in evidence and marked "Plaintiff's Exhibit No. 4.")

[Plaintiff's Exhibit No. 4 is set out as Exhibit D of the complaint, on page 23 of this record.]

Mr. Smith: Exhibit E.

The Court: Exhibit E is 5, and is a letter dated April 26th, 1939.

Mr. Mitchell: No objection.

(The document referred to was received in evidence and marked "Plaintiff's Exhibit No. 5.") [8]

[Plaintiff's Exhibit No. 5 is set out as Exhibit E of the complaint, on page 24 of this record.]

The Court: Exhibit F is dated March 31, 1939. It will be received as 6.

Mr. Smith: May 31, is it not?

The Court: May 31, 1939, that is right.

Mr. Mitchell: No objection.

(The document referred to was received in evidence and marked "Plaintiff's Exhibit No. 6.")

[Plaintiff's Exhibit No. 6 is set out as Exhibit F of the complaint, on page 25 of this record.]

The Court: Exhibit G is the amended claim and substitution of former claim filed as of the 7th day of July, 1939.

Mr. Mtichell: No objection to the introduction of that, your Honor. However, naturally the Government doesn't agree to the contentions made in the refund claim.

The Court: Well, that is to show that a dispute existed between the claimant and the taxing power.

Mr. Mitchell: That is true, your Honor.

The Court: And that the very controversy which is brought into court was before them. Otherwise, we have no jurisdiction. They have to show that they laid this very claim before the Commissioner.

Exhibit G is——

The Clerk (Interrupting): G is 7, your Honor.

The Court: Yes. It will be received.

(The document referred to was received in evidence and marked "Plaintiff's Exhibit No. 7.")

[Plaintiff's Exhibit No. 7 is set out as Exhibit G of the complaint, on page 27 of this record.]

The Court: Exhibit E contains the amended claim and [9] the arguments in support of it, consisting of some 15 typewritten pages.

The Clerk: That is still part of G.

The Court: G consists of an amended claim written on the regular printed form, plus the argument in support of it, which begins on page 2.

Mr. Mitchell: I might make the record clear.

The Government does not stipulate to the genuineness of Exhibit A attached to the refund claim, page 36.

The Court: All right. Well, you may stipulate that the document, as in this wording, was filed with the Commissioner.

Mr. Mitchell: We so stipulate.

The Court: All right. I see. Exhibit H—— [10]

Mr. Smith (Interrupting): That is the letter of rejection of the claim.

The Court: Letter of the final rejection of the claim, dated February 2, 1940.

Mr. Smith: That is why we are here.

Mr. Mitchell: No objection.

The Clerk: Plaintiff's 8.

(The document referred to was received in evidence and marked "Plaintiff's Exhibit No. 8.") [11]

[Plaintiff's Exhibit No. 8 is set out as Exhibit H of the complaint, on page 45 of this record.]

Mr. Bloom: One of the issues, your Honor, in the event that your Honor decides in favor of the defendant, will be the value of this business, and in order to eliminate that issue from the case, it is stipulated that one-half the value of the rotary jar business and its assets, including rotary jars, patents, patent rights, good will, for estate tax purposes, on the basic date, was $160,000.00.

Mr. Mitchell: So stipulated. [12]

JAMES A. KAMMERDINER

called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please?
The Witness: James Allen Kammerdiner.

Direct Examination

By Mr. Smith:

Q. State your name?
A. James Allen Kammerdiner.
Q. Myrtle B. Kammerdiner was your wife?
A. Yes.
Q. She is deceased? A. Yes.
Q. What year? A. '34.
The Court: '35 or '34?
The Witness: '34—or '35.

By Mr. Smith:

Q. '35 was it?
A. Yes; six years ago. [13]
Q. And she was a resident of this County.
A. Yes.
Q. And of this State? A. Yes.
Q. You were married in what year?
A. 1908.
Q. 1908? A. Yes.
Q. Was that in Los Angeles, County of Los Angeles? A. County of Orange.
Q. In Orange County? A. Yes.
Q. And you and Mrs. Kammerdiner had been

(Testimony of James A. Kammerdiner.)

residents of this community for some time prior to that time? A. Yes.

Q. At the time of marriage, did Mrs. Kammerdiner have or own any property, and if so, to what extent?

A. None that I knew of, no, sir.

Mr. Mitchell: What was the answer?

The Witness: No.

By Mr. Smith:

Q. No property? A. No, sir.

Q. Did you have any property at the time of marriage? A. No, sir.

Q. I want to refresh your recollection, if I may. [14]

Did you, prior to your marriage and after your engagement to Mrs. Kammerdiner, forward to her any checks that you may have earned?

A. Yes. I was working——

Mr. Mitchell: That is objected to on the ground it is immaterial.

Mr. Smith: It is just to refresh his recollection.

The Court: Well, I can't tell, gentlemen. In these husband and wife relations, a lot of things go back for many years and it is very difficult to tell in such a stage whether this is material or not. [15]

Mr. Mitchell: Objected to on the further ground it is not the best evidence.

The Court: Well, I will allow the particular question.

(Testimony of James A. Kammerdiner.)

By Mr. Smith:

Q. Mr. Kammerdiner, did you have any property of any value at the time of marriage, and if so, about what was the extent?

A. No, any more than I would say a couple of hundred dollars.

Q. A couple of hundred dollars?

A. Yes.

Q. What work did you continue to do after marriage? A. Drilling oil wells.

Q. In 1923 were you still drilling oil wells? [16]

A. Yes.

Q. And during that time did your wife make any money that amounted to anything?

A. Right along in that time, no.

Mr. Mitchell: What time?

Mr. Smith: From 1908 to 1923.

The Witness: Yes, sir, she made some money in there.

By Mr. Smith:

Q. What did she do?

A. She ran a boarding house.

Q. Just tell us how this boarding house was run?

A. I don't know how to answer that.

Q. Did you run it, or did she or both of you?

A. It was run, yes. It was on a lease where I was and she did the working part of it.

Q. And she took in boarders?

(Testimony of James A. Kammerdiner.)

A. Well, yes. There were sixty or eighty of them.

Q. And there was some money made in that venture? A. Yes.

Q. Did you have any agreement with her as to who that money belonged to?

A. We had a checking account here in the city and we just moved the money in there and it was a joint account.

Q. Did you have any agreement with her?

Mr. Mitchell: Just a moment. I object to that question as calling for the conclusion of the witness. [17]

The Court: In a matter of this character, gentlemen, where the actions of the parties are the ones which must determine what, if any, agreement existed, I think leading questions as to whether there was an agreement don't help much. State what they talked about, what they decided in regard to their monies or properties, what was to be done with them.

By Mr. Smith:

Q. What was said relative to the boarding house money, if anything?

A. Well, I had lots of work to do outside. I had four wells to take care of and we decided that she would take care of the boarding house and I would take care of the work outside, practically the same thing as we had in the jar business, practically the same thing all along the line.

(Testimony of James A. Kammerdiner.)

Q. "In the jar business," that would mean the rotary jar business? A. Yes.

Q. And the interest therein, which is involved here? A. Yes.

Q. Did you have any discussion about that, as to who would own it or what your rights would be in it?

Mr. Mitchell: About what? The jar business?

Mr. Smith: Yes. And also the patent.

The Witness: Yes, we had a talk on that on account of her being able to take care of the office work, and I [18] was able to take care of the work out in the field.

Q. When was that discussion?

A. It was decided that——

Q. About what year was it?

A. It was '23.

Q. '23? A. Yes.

Q. What was the substance of your discussion?

A. Well, we were to divide 50-50, win or lose. It was very questionable whether we could make any money at it, but we did make some money in the long run.

Q. Tell us about the inception of this jar business, how it was started and what it consisted of?

A. It is pretty hard to explain that.

Q. We know nothing about it here. Tell us about the jar business, what it was. Just tell the Court what it was. A. It is a——

Q. Did you devise it or someone else?

(Testimony of James A. Kammerdiner.)

A. I did.

Q. Tell us about how you happened to do it, the history?

A. I was working for the Union Oil Company and I had nine wells to take care of, and one morning I had four of them fishing lost tools and stuff in the hole. I got the idea that if I had something to go in and get ahold of those [19] lost parts, I could shake them out of there and bring them out of the sand, and I devised this tool and it was a great help.

Q. What was the tool called?

A. The Kammerdiner rotary jar.

Q. Kammerdiner Rotary jar? A. Yes.

Q. That was in '22 or '23? A. '23.

Q. '23? A. Yes.

The Court: Was that a fishing tool?

The Witness: It really wasn't a fishing tool; it was to go on top of a fishing tool. When you got ahold of anything that couldn't be pulled, why you could strike a blow at it, an upward blow, and striking that blow, by that we got out many, many jobs, hundreds of them.

The Court: It would jar it loose?

The Witness: Yes.

The Court: Instead of cutting it, you would jar it loose; is that the idea?

The Witness: Well, in some cases they cut pipe, but this is where you get hold of it and stretch the

(Testimony of James A. Kammerdiner.)

pipe up three, four or five feet then turn, and it slips and strikes the blow. It strikes upward.

The Court: The reason I am asking is I am familiar [20] with the operations of the tools because I have handled several patent cases on the fishing tools.

The Witness: Is that so?

The Court: Yes.

The Witness: They have cutters where they go in and cut pipes.

The Court: I know.

The Witness: I had one of those myself once.

By Mr. Smith:

Q. In relation to this type of tool, the patent, was yours the orignal patent or otherwise?

A. Yes, it was the original patent.

Q. The first patent of that type in the field?

A. Yes, it was the first trip jar.

Q. Did you improve or develop it, or buy new protective patents? A. Yes, sir.

Q. And you have many of them now, I assume?

A. Yes.

Q. Which are the valuable ones and which are the ones of lesser value, as you would estimate it?

A. You mean which is the most valuable now?

Q. Yes.

A. Well, it is hard to determine that.

Q. Well, at the time of Mrs. Kammerdiner's decease?

A. That was the Kammerdiner rotary jar. [21]

(Testimony of James A. Kammerdiner.)

Q. That was the first one you had?

A. Yes.

Q. How much of the value would be in that?

A. Well, that would be hard to determine.

Q. If you hadn't had that patent, could you have protected yourself with the others you got?

A. No.

Q. In other words, that was your basic patent, you called it; is that right? A. Yes.

Q. And was most of your value in that patent?

A. Yes. That patent, though, now has——

Q. I am not talking about now. I am talking about 1935. We are talking about nothing that happened after 1935.

I will show you what purports to be an agreement, and ask if you have seen that document before and what it is? A. Yes.

Q. And what is it, Mr. Kammerdiner? I mean who signed the document?

A. It is James A. Kammerdiner and Myrtle B. Kammerdiner.

Q. That is your signature? A. Yes.

Q. That is your wife's? A. Yes. [22]

Q. Do you recall the circumstances and the time when you signed it? A. Yes.

Q. On January 3rd, 1928? A. Yes.

Q. Who prepared that?

A. Mr. Ellis, I think.

Q. Mr. Kimpton Ellis? A. Yes.

Q. And had you had any agreement prior to executing this written agreement with your wfe?

(Testimony of James A. Kammerdiner.)

Mr. Mitchell: Just a minute. I object to that on the ground it calls for the conclusion of the witness.

By Mr. Smith:

Q. Had you had any business arrangement, I will put it that way, with your wife previous to executing this agreement? A. Yes.

Mr. Mitchell: That is objected to further on the ground that it has already been asked and answered.

The Court: Overruled.

By Mr. Smith:

Q. And how did that business arrangement differ from this writing?

A. Well, I wouldn't say any different.

Q. Was it the same? [23]

A. The same thing.

Q. And that business arrangement was made in what year with your wife? A. '23.

Q. Was that at the time that you devised and patented or invented this rotary jar? A. Yes.

Q. And that business arrangement, had it been changed at any time prior to the executing of this agreement? A. No, sir.

Q. Was this agreement altered or changed in any way after its execution? A. No, sir.

Q. Was it in full force and effect at the time of the death of your wife? A. Yes, sir.

Mr. Smith: We will offer it in evidence and we will ask, if your Honor please, that it be in substitution of our "A" to Exhibit G. This is the one Mr. Mitchell said that they would require proof on.

(Testimony of James A. Kammerdiner.)

The Court: You don't substitute it because it confuses the matter. Merely give it a separate number, just so we identify it as the same thing which is already in as a part of G. What would the next number be?

The Clerk: Plaintiff's 9.

The Court: It may be received as Plaintiff's 9.

[24]

(The document referred to was received in evidence and marked "Plaintiff's Exhibit No. 9.")

PLAINTIFF'S EXHIBIT No. 9

The undersigned James A. Kammerdiner and Myrtle B. Kammerdiner, husband and wife, of Los Angeles, California, hereby state, declare and agree that the business of manufacturing, renting and selling Rotary Jars, heretofore conducted by them under the name of James A. Kammerdiner, at 237 South Highland Avenue, Los Angeles, California, all the assets of which business is their community property, is now and all increase or change thereof shall be, their joint property with right of survivorship.

In Witness Whereof we have hereunto affixed our signatures at the City of Los Angeles, California, on the 3rd day of January, 1928.

JAMES A. KAMMERDINER
MYRTLE B. KAMMERDINER

(Testimony of James A. Kammerdiner.)

State of California,
County of Los Angeles—ss.

On this 3rd day of January, 1928, before me, Kimpton Ellis, a Notary Public in and for the said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared James A. Kammerdiner and Myrtle B. Kammerdiner, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal in said County the day and year in this certificate first above written.

[Seal] KIMPTON ELLIS

Notary Public in and for said County of Los Angeles, State of California.

[Endorsed]: Filed Dec. 29, 1941.

By Mr. Smith:

Q. The patents which were used in this rotary jar business, in whose name were they issued and did they stand? A. James A. Kammerdiner.

Q. All of them were in your name?

A. Yes.

Q. Were any of them at any time in your wife's name? A. No.

(Testimony of James A. Kammerdiner.)

Q. Did you ever transfer any of them to your wife or assign them to your wife? A. No, sir.

Q. Or to the Kammerdiner Rotary Jar Company, or business? Did you ever assign any of them to anybody else? A. No, sir.

Q. Or to any company or any associate?

A. No, sir.

Q. What was the manner in which you conducted your rotary jar business, particularly in reference to whether you sold jars or whether you rented them, or how was the business handled in relation to your clients?

A. We rented them here in the United States and sold them for foreign shipment.

Q. You had foreign patents, too, I assume?

A. Yes, sir. [25]

Q. In foreign countries? A. Yes.

Q. Your jars were rented here?

A. In the United States.

Q. And that business was conducted by a business known as the Kammerdiner Rotary Jar business? A. Yes, sir.

Q. That is the way it was handled?

A. Yes.

Q. That was not an incorporation in any way?

A. No, sir.

Q. You had no Articles of Association?

A. No, sir.

Q. Drawn up, or anything of that kind?

A. No, sir.

(Testimony of James A. Kammerdiner.)

Q. Was the rentals done in the name of the Kammerdiner Rotary Jar, or done in your name, the rentals of the jars?

A. Well, I couldn't say on that. I was well acquainted in the field and it was just James Kammerdiner there altogether.

The Court: What was the title?

The Witness: How?

The Court: What was the name under which you did business?

The Witness: James Kammerdiner, James A. Kammerdiner.

The Court: You didn't file a certificate? You know [26] what a certificate of doing business under a fictitious name is, don't you, in California?

The Witness: Yes, I have some idea of it.

The Court: Well, if you don't know then, you didn't file one.

Mr. Smith: One was filed, if your Honor please.

The Court: What?

Mr. Smith: One was filed.

The Court: All right.

The Witness: And I think it was advertised, too, at that time.

The Court: All right.

By Mr. Smith:

Q. Mr. Kammerdiner, did you, prior to 1923, ever receive any money other than for your personal services? A. No.

(Testimony of James A. Kammerdiner.)

Q. Did you receive anything by gift or did you inherit any money? A. No.

Q. Nothing except for personal services for what you earned? A. Yes.

Q. What you earned as the result of your wages?

A. I made some investments that I made money on, of course.

Q. But the nucleus of those investments was the money [27] that you had earned by your personal services? A. Yes.

Q. Personal efforts? A. Yes.

Q. By salary or wages or something of that character? A. Yes.

Q. Did Mrs. Kammerdiner ever receive any property other than for her personal services?

Mr. Mitchell: Any what?

Mr. Smith: Any property or money or funds other than for her personal services.

The Witness: No, sir.

By Mr. Smith:

Q. Did she inherit anything that went into the rotary jar business in any way? A. No, sir.

Q. Or nothing by gift that went into the rotary jar business in any way? A. No, sir.

Q. Did you make any gifts of property to Mrs. Kammerdner that went into the rotary jar business?

A. No, I can't say I did. We were working together. There was no chance of giving then.

Q. During the time that Mrs. Kammerdiner was, as you say, working and made wages, or earned

(Testimony of James A. Kammerdiner.)

money, did you at any time have any agreement with her that those wages or [28] that money should be her separate property or belong separately to her? A. No, sir.

Mr. Mitchell: I object to that question on the ground that it has already been asked and answered.

Mr. Smith: Not as fully as I would like to have it answered.

Mr. Mitchell: The witness testified——

The Court (Interrupting): All right. Let's avoid repetitious statements. He knows what his dealings were with his wife. Let's take them one at a time.

By Mr. Smith:

Q. Your answer was "No"?

A. That is right.

Mr. Smith: I guess that is all.

Cross Examination

By Mr. Mitchell:

Q. Mr. Kammerdiner, on direct examination you did state that the agreement regarding the boarding house and your working in the field—by the way, how many boarders did your wife take care of at that time?

A. Occasionally as many as one hundred sixty.

Q. And she had full charge?

A. Full charge of the buying and management.

Q. And your agreement regarding that and the drill- [29] ing contract, you were under a contract for that drilling job, were you not? A. No.

(Testimony of James A. Kammerdiner.)

Q. What? A. No.

Q. You were paid by the day?

A. By the month.

Q. By the month? A. Yes.

Q. And you stated on direct examination that the agreement regarding that, if I understood you correctly, regarding that boarding house and the drilling in connection with it on the same lease——

A. (Interrupting) Yes.

Q. ——was the same as the agreement of 1923 regarding the jar business?

Mr. Bloom: Just a minute. Mr. Mitchell himself objected to the word "agreement," and therefore Mr. Kammerdiner couldn't testify to what the agreement was.

The Court: On cross examination he may ask the question.

Mr. Mitchell: Will you read the question, Mr. Reporter?

Do you remember the question?

The Witness: No, I do not.

Mr. Mitchell: Will you read it, please?

(The question referred to was read by the reporter, [30] as follows:

"Q. And you stated on direct examination that the agreement regarding that, if I understood you correctly, regarding that boarding house and the drilling in connection with it on the same lease was the same as the agreement of 1923 regarding the jar business?")

(Testimony of James A. Kammerdiner.)

The Witness: I would say so, because all the money I earned out there and all that she earned, we sent in here to the bank at Seventh and Spring Street.

By Mr. Mitchell:

Q. And placed it in a joint account?

A. How?

Q. And placed it in a joint account?

A. Yes.

Q. Go ahead.

A. And in that way, why, I figured it was just about the same as we had went into business in the jar business.

Q. That is, 50-50?

A. Very consistent, I would say.

Q. What is that?

A. I would say that was very much in line as it was when we went into the jar business.

Q. That was a 50-50 split, was it not?

A. Yes.

Q. What year was that, Mr. Kammerdiner?

A. I went out there in 1909, one year after I was [31] married.

Q. How long did that continue?

A. Six years.

Q. Six years that she kept the boarding house, and you handled the drilling in the field on the same lease? A. Yes.

Q. And the compensation which you received from your services, and the profits made on run-

(Testimony of James A. Kammerdiner.)

ning the boarding house were all kept in a single joint account; is that correct?

A. I wouldn't say they were all kept there. I had an account at Fullerton. We used that as an emergency out there, and that was in my name and we never had very much money out there, just a few hundred dollars, and the rest was always brought in here to the city, the Security National Bank.

Q. Where was this lease?

A. At a little place called Brea.

Q. And that was near what town?

A. It was about four miles north of Fullerton.

Q. And you kept funds in a bank in Fullerton for, you say, just living expenses or emergency?

A. Emergencies, yes.

Q. And everything you saved was put into it?

A. Everything was brought in to Los Angeles.

Q. Brought into the Los Angeles bank?

A. Yes. [32]

Q. Were they both joint accounts?

A. No. That one in Fullerton was in my name.

Q. In your name? A. Yes.

Q. But the one in Los Angeles was in your joint names? A. Yes.

Q. Were you able to find your bank deposit books for that period of time from 1909 and the following six years?

Counsel states that you were unable to find the bank deposit books for that period.

(Testimony of James A. Kammerdiner.)

A. Well, I looked very close and I couldn't find them. They may be in there.

Q. I show you, Mr. Kammerdiner, three deposit books, one showing deposits beginning August 3, 1921, a book issued by the Guaranty Trust and Savings Bank, Term No. 248595, the period begins August 3, 1921 and ends October 9, 1935.

Can you, from memory, tell whether the account that was kept between 1909 and during the following six years, during your work on the lease at Brea, was issued in the same manner as this, "James Kammerdiner, Mrs. James Kammerdiner"?

A. Well, I think that is the way it would be.

Q. That is the joint account you referred to?

A. Yes.

Q. Was it in the Security Bank, the Guaranty Bank, that account that was kept prior to 1915?

A. Yes. It was at Seventh and Spring, the Security [33] Bank, it was; I believe that is the Security, isn't it?

Q. It is now the Security. It used to be the Guaranty on Seventh and Spring.

A. Yes.

The Court: It is still called the Guaranty Office.

Mr. Mitchell: That is right, your Honor. It is now taken over by the National across the street, the First National.

The Court: Yes.

Mr. Mitchell: May that be identified as Defendant's Exhibit A?

(Testimony of James A. Kammerdiner.)

The Court: All right. It may be received in evidence. Is there any objection, Mr. Smith?

Mr. Bloom: We object on the ground it is not the best evidence. The card opening the account from the bank would be the best evidence of how the account read.

The Court: Well, this is just as good as the card.

Mr. Bloom: I believe not, your Honor.

The Court: It is an original entry and it has a joint deposit.

Mr. Bloom: Well, if there is going to be any contention made that the lack of the words "as Joint Tenants, with right of survivorship," on the bank account——

The Court: It isn't lacking; it is here.

Mr. Bloom: Some of these may not have that.

The Court: Well, of course, this one has on it a [34] stamp.

Mr. Bloom: I know some have them and some don't.

The Court: That is a question of argument. That merely means the effect to be given to them.

Mr. Bloom: I assume counsel is going to go along with each of these books and introduce them into evidence.

The Court: He is offering them as going to the entire case, not to a particular point.

Mr. Smith: I think, your Honor, you haven't the purport of counsel's examination. I am fearful

(Testimony of James A. Kammerdiner.)
that counsel will introduce a book here that will show it is in the two names of these parties without any description, namely, showing Joint Tenancy, or with right of survivor. Then counsel in his brief might say it is a Tenancy in Common account.

The Court: I know Mr. Mitchell as well as I know you, probably I know you better because I have known you longer. Didn't you see that stamp there?

Mr. Mitchell: I didn't.

Mr. Smith: He made the mistake right there which indicates very definitely that counsel didn't want to get one of those type of books.

Mr. Mitchell: I have no objection. I want the true facts to come out, Mr. Smith.

The Court: Gentlemen, you know me well enough that regardless of what counsel does or doesn't do, that I don't [35] consider this a game of skill, lawsuits as a game of skill. He has offered this and I am telling you that it has a stamp on it and if he made a mistake he can withdraw it. If he doesn't intend to offer it, I will put it in as my Exhibit.

Mr. Smith: The point we make is this: My colleague here has a bank account that is in Joint Tenancy, and just both their names, he and his wife's names are on the book. That would be all that is necessary, but the kind of account it is in the bank is indicated by the card, the contract that the parties make with the bank.

(Testimony of James A. Kammerdiner.)

The Court: I agree with you.

Mr. Smith: That is the point we are making.

The Court: That is all right.

The Court: The objection will be overruled and the bank account denominated "Term No. 248595 of the Guaranty Trust and Savings Bank," will be received as Government's Exhibit 1.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 1.")

DEFENDANT'S EXHIBIT No. 1

GUARANTY TRUST & SAVINGS BANK

Los Angeles

Term No. 248595

This Account Is Not Subject to Check

In Term Account with
JAMES KAMMERDINER or
MRS. JAS. KAMMERDINER

Joint owners, subject to the order of either, the balance at the death of either, to belong to the survivor.

Date	Entered By	Withdrawn	Deposited	Balance
Aug 3 '21	M		34.69	34.69
Sep 12 1921	C		25	59.69
Sep 15 1921	C		15	74.69
Sep 21 1921	C		49.50	124.19
Oct 25 1921	C		54.75	178.94
Nov 1 1921	C		15	193.94
Dec 7 1921	T		216	409.94
Dec. 31 '21,	Interest(66)		1.98	411.92
Jan 10 '22	C		37.25	449.17
Feb 27 '22	J		21	470.17

(Testimony of James A. Kammerdiner.)

Guaranty Trust & Savings Bank—(Continued)

Date	Entered By	Withdrawn	Deposited	Balance
Mar 13 '22	J		30	500.17
Mar 20 '22	J		25	525.17
Mar 22 '22	T		5	530.17
				530.17
June 30 '22	Interest(67)		10.60	540.77
Aug 1 '22	(Illegible)		20	560.77
Aug 14 '22	J		39.23	600
Nov 14 '22	T		20	620
Dec. 31 '22	Interest(68)		11.72	631.72
Dec 29 1922	J		2.50	634.22
Jun 25 '23	L		62.50	696.72
June 30 '23	Interest(69)		12.68	709.40
Aug 31 '23	M		20	729.40
Nov 2 '23	C		35	764.40
Nov 24 '23	L		79.40	843.80
Dec 3 '23	L		18.35	862.15
Dec 8 '23	(Illegible)		20	882.15
Balance Forward				882.15
Dec. 31-23	Interest(70)		14.49	896.64
Jan 21 '24	N	~~20~~	20	~~876.64~~
				916.64
Feb 1-'24	L		150	1066.64
May 26 '24	N		40	1106.64
Jun 5 '24	N	450		656.64
Jun 24 '24	W		37.50	694.14
June 30 '24	Interest (71)		13.12	707.26
Jul 23 '24	(Illegible)		37.50	744.76
Oct 20 '24	(Illegible)		5.21	749.97
Nov 10 '24	(Illegible)		55.71	805.68
			Balance	Forward
Balance Forward				805.68
Nov 24 '24	(Illegible)		37.50	843.18
Nov 26 1924	(Illegible)		1.25	844.43
Nov 26 1924	(Illegible)		43.39	887.82
Dec. 31'24	Interest (72)		14.86	902.68
Dec 29 '24	(Illegible)		6.91	909.59
Jan 7 '25	S		17.46	927.05

(Testimony of James A. Kammerdiner.)

Guaranty Trust & Savings Bank—(Continued)

Date	Entered By	Withdrawn	Deposited	Balance
Jan 10 '25	(Illegible)		32.43	959.48
Mar 2 '25	(Illegible)		39	998.48
May 19 1925	(Illegible)		4.68	1003.16
May 1-1925	(Illegible)		15	1018.16
Jun 22 1925	(Illegible)		32.96	1051.12
Jul 28 1925	(Illegible)		118.76	1169.88
			Balance Forward	
Balance Forward				1169.88
June 30 '25	Interest(73)		20.14	1190.02
Aug 24 '25	(Illegible)		97.63	1287.65
Aug 28 1925	(Illegible)		30.91	1318.56
Sep 28 1925	N		44	1362.56
Nov 9 1925	N		57.56	1420.12
Nov 16 1925	N		31.50	1451.62
Dec. 31 '25	Interest(74)		25.09	1476.71
			~~25.09~~	~~1506.71~~
June 30 '26	Interest (75)		30	1506.71
Jul 26 1926	K	K	229	1735.71
Aug 3 1926		K	70	1805.71
			Balance Forward	
Balance Forward				1805.71
Aug 10 1926	(Illegible)		45	1850.71
Sep 10 1926	(Illegible)		25	1875.71
Nov 13 1926	(Illegible)		70	1945.71
Nov 15 1926	(Illegible)		56.06	2001.77
Dec 9 1926	(Illegible)		26.39	2028.16
Dec. 31 '26	Interest (76)		36.24	2064.40
Apr 5 1927	(Illegible)		19.99	2084.39
May 31 1927	(Illegible)		40	2124.39
Oct 7 1927	(Illegible)		68.56	2192.95
June 30 '27	Interest(77)		42.18	2235.13
Nov 21 1927	ES		51.27	2286.40
			Balance Forward	
Balance Forward				2286.40
Nov 25 1927	(Illegible)		9.83	2296.23
Nov 25 1927	(Illegible)		20	2316.23

(Testimony of James A. Kammerdiner.)

Guaranty Trust & Savings Bank—(Continued)

Date	Entered By	Withdrawn	Deposited	Balance
Dec. 31 '27	Interest(78)		44.09	2360.32
Jan 16 1928	(Illegible)		120.90	2481.22
June 30 '28	Interest(79)		48.76	2529.98
Oct 1-'28	S		51.07	2581.05
Dec. 31 '28	Interest(80)		50.58	2631.63
Dec 28 '28	S		2.14	2633.77
June 30, '29	Interest(81)		53.17	2686.94
Aug 15 '29	S		143.79	2830.73
Dec. 31, '29	Interest(82)		55.88	2886.61
Jan 17 '30	S		2.12	2888.73
			Balance	Forward
Balance Forward				2888.73
June 30 '30,	Interest		57.80	2946.53
Dec. 31, '30	Interest		58.92	3005.45
June 30, '31	Interest		57.59	3063.04
Dec. 31, '31	Interest		53.60	3116.64
2-17-32			500	3616.64
2-17-32	Ret	500		3116.64
June 30, '32,	Interest		54.53	3171.17
Dec. 31, 32,	Interest		55.49	3226.66
Feb 15 1933	OR	2500		726.66
Mar 20 1933	OR		590.50	1317.16
June 30, 1933,	Interest			1332.96
Aug 25 '33	(Illegible)	1000		332.96
			Balance	Forward
Balance Forward				332.96
Dec. 31, 1933	Interest		4.98	337.94
June 30, 1934,	Interest		5.05	342.99
Dec. 31, 1934,	Interest		4.70	347.69
Jan 16 '35	(Illegible)		100	447.69
June 30, 1935,	Interest		5.46	453.15
Oct 9-'35	(Illegible)	132	453.15	
			Closed.	

[Endorsed]: Filed Dec. 29, 1941.

(Testimony of James A. Kammerdiner.)

The Court: We will argue the effect, if any, later on.

Mr. Mitchell: I think, with the Court's and counsel's permission, I would offer them in evidence at this time rather than having them identified and then offering them [36] later.

The Court: All right.

Mr. Mitchell: I would like to get the dates in the record. One issued by the First National Bank, Fullerton, California, which starts November 13, 1924 and ends December 2, 1925, in the name of "Mr. or Mrs. Jas. Kammerdiner."

The Court: All right. That will be received as Government's Exhibit 2.

Mr. Bloom: Might it be understood that our objection——

The Court (Interrupting) Subject to the same objection, which is overruled.

Mr. Bloom: And exception.

The Court: That is no longer necessary.

Mr. Bloom: I thought so, but I wanted to be sure.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 2.")

(Testimony of James A. Kammerdiner.)

DEFENDANT'S EXHIBIT No. 2

FIRST NATIONAL BANK

Fullerton, California

In account with

MR. or MRS. JAS. KAMMERDINER

Nov. 1	1650—
Nov 13 1924	425—
Nov 15 1924	800—
Nov 22 1924	275—
Dec 17 1924	1400—
Dec 19 1924	100—
Mar 10 1925	50—
Mar 16 1925	575—
Mar 25 '25	600—
Apr 9 1925	1250—
Apr 30 '25	2000—
May 15 '25	1650—
May 18 1925	1350—
Jun 20 1925	200
Jul 29 1925	800—
Aug 8 '25	656.25
Aug 18 1925	2050—
Sep 1 1925	3300—
Sep 18 1925	3550—
Oct 10 1925	1797—
Oct 14	4514—
Oct 21 1925	4740.40
Oct 27 1925	8688.35
Nov 17 1925	2312.55
Nov 17 1925	4823.15
Dec 1 1925	1059—
Dec 2 1925	110.13

[Endorsed]: Filed Dec. 29, 1941.

(Testimony of James A. Kammerdiner.)

Mr. Mitchell: The next one is issued by the Citizens National Trust & Savings Bank, successors to Citizens Trust & Savings Bank, in account with "Mr. or Mrs. Jas. Kammerdiner."

The first entry is November 21, 1925, and the last entry is July 26, 1930. That is for Los Angeles, isn't it?

The Witness: Yes, on Western Avenue.

The Court: The Western Avenue branch?

Mr. Bloom: Same objection.

The Court: It will be received as Government's Exhibit 3. [37]

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 3.")

DEFENDANT'S EXHIBIT No. 3

CITIZENS NATIONAL TRUST & SAVINGS BANK

Successors to
Citizens Trust & Savings Bank

In Acct. with

MR. or MRS. JAS. KAMMERDINER

Nov 21 '25	A	2362.50
Dec 3 1925	Z	160.64
Dec 11 '25	A	2131.27
Dec 15 '25	A	6546.90
Dec 17 '25	A	1700—
Dec 19 1925	Z	1621.52
Dec 24 '25	A	2148.17
Dec 31 '25	A	1915—
Jan 5 '26	A	75—
Jan 13 '26	A	(6542.66

(Testimony of James A. Kammerdiner.)

Citizens National Trust & Savings Bank—(Continued)

Jan 13 '26	A	(10
Jan 16 '26	A	1068.27
Feb 3 '26	A	1072.65
Feb 18 '26	A	1202.73
Mar 5 '26	A	662.50
Mar 8 '26	A	448.21
Mar 9 '26	A	925.49
Mar 15 '26	A	489.68
Mar 22 '26	A	500—
Mar 25 1926	Z	1167—
4-13-26	Dup	3213.43
Apr 14 '26	(Illeg.)	1875—
Apr 21 '26	A	275—
May 12 '26	J	300—
May 21 '26	A	862.50
May 26 '26	A	1075—
May 29 '26	A	762.50
Jun 2 '26	J	404.50
Jun 7 '26	A	390—
Jun 22 '26	A	2118.50
Jun 24 '26	A	641—
Jul 2 '26	Z	1000—
Jul 16 1926	C	300—
Jul 17 1926	C	12996.95
Jul 20 1926	C	1367.50
Jul 23 '26	A	206—
Aug 2 '26	Z	400—
Aug 10 '26	Z	823.93
Aug 13 '26	J	332.62
8-21-26	Dup	430—
Aug 25 '26	A	1957.50
Sep 1 1926	Z	1062.94
Sep 7 1926	Z	775—
9-16-26	Dup	1659.62
Sep 20 '26	A	2000—
9-23-26	Dup	59.15
Sep 28 '26	A	1237.50
Oct 15 '26	A	181.28

(Testimony of James A. Kammerdiner.)

Citizens National Trust & Savings Bank—(Continued)

Oct 16 '26	A	15634.93
Oct 26 '26	A	2350—
Nov 4 '26	J	800—
Nov 9 '26	A	5430.68
Nov 19 '26	J	912—
Nov 29 '26	A	2000—
Dec 11 '26	A	53.40
Dec 13 '26	A	1607.26
Dec 16 '26	A	300—
Dec 22 '26	A	1875—
Dec 24 '26	A	1022—
Dec 30 '26	A	8720.22
Jan 12 '27	A	1080.10
Jan 15 '27	A	5471.68
Jan 22 '27	A	1603—
Feb 14 '27	A	1729.90
Feb 15 1927	Z	2000—
Feb 16 1927	Z	3000—
Feb 18 1927	Z	1300—
Mar 15 '27	A	10006.04
~~Mar 21 '27~~	~~A~~	~~2864.65~~
Mar 21 '27	A	2954.55
Mar 26 '27	A	1459—
Mar 31 '27	A	4047.85
Apr 23 '27	A	5000—
Apr 27 '27	A	1250—
Apr 29 '27	A	600—
May 7 1927	Z	650.50
May 14 '27	A	1475—
May 27 '27	A	3587.03
5-16-27	dup	700—
Jun 1 '21	A	818.32
Jun 2 '27	Z	1500—
Jun 4 '27	A	1624.35
Jun 15 '27	A	1044—
6-8-27	dup	1362.50
Jun 17 '27	A	675—
Jun 22 '27	A	2097.54

(Testimony of James A. Kammerdiner.)

Citizens National Trust & Savings Bank—(Continued)

Jun 23 '27	A	1650—
Jun 28 '27	A	2025—
Jul 6 '27	A	10798.01
Jul 8 '27	A	3123.75
Jul 11 '27	(Illeg.)	527.80
Jul 15 '27	(Illeg.)	1100—
Jul 18 '27	(Illeg.)	3546.07
Jul 22 '27	(Illeg.)	2991.24
Jul 27 '27	(Illeg.)	5173.88
Jul 30 '27	A	600—
Aug 27 '27	Z	2067.95
8-2-27	Dup	750—
8-20-27	Dup	300—
Sep 13 '27	A	2600.70
Sep 16 '27	A	2180.75
9-20-27	dup	152.63
9-20-27	dup	305.25
Sep 22 '27	A	400—
Oct 1 '27	A	950—
Oct 8 '27	A	1600—
Oct 11 '27	A	677.80
Oct 18 '27	A	2782.70
Oct 25 '27	A	2762.50
Nov 12 '27	A	700—
Nov 19 '27	A	4200—
Nov 22 '27	A	4232.66
Nov 29 '27	A	1100—
Dec 12 '27	A	3734—
Dec 23 '27	A	4035.50
Jan 11 '28	A	3682.20
Jan 20 '28	A	1600—
Jan 24 '28	Z	3936.85
Feb 20 '28	A	310—
2-8-28	Dup	2375—
Feb 27 '28	A	1000—
Mar 2 '28	A	750—
12-29-27	Dup	1350—
Mar 7 '28	A	1875—

(Testimony of James A. Kammerdiner.)

Citizens National Trust & Savings Bank—(Continued)

Mar 7 '28	A	2000—
Mar 15 '28	A	4967.09
Mar 23 '28	A	1063—
Apr 7 '28	A	400—
Apr 12 '28	(Illeg.)	3450—
Apr 16 1928	A	1125—
3-19-28	Dup	1975—
Apr 19 1928	A	4532.10
Apr 27 '28	A	3901.95
May 3 '28	A	3800—
May 7 '28	A	1541.05
May 18 '28	A	1293.50
5-15-28	Dup	1804—
May 22 '28	A	6247.50
Jun 14 '28	Z	1544—
Jun 15 1928	A	1862.35
Jun 19 '28	J	426.75
Jun 21 '28	J	650—
Jun 30 '28	A	4850—
Jul 3 1928	A	6000—
Jul 7 '28	(Illeg.)	500—
Jul 9 '28	(Illeg.)	2748.90
7-12-28	Dup	450—
Jul 14 '28	(Illeg.)	2294—
Aug 6 '28	(Illeg.)	1100—
Aug 10 '28	(Illeg.)	668.50
Aug 29 '28	Z	2550—
Sep 15 '28	Z	3020.83
Sep 19 '28	Z	1251—
Sep 26 '29	Z	3450—
10-4-28	Dup	6294.10
Oct 6 '28	Z	600—
Oct 11 '28	Z	9373.65
Oct 16 '28	Z	2831.92
Oct 18 '28	Z	984.71
Oct 23 '28	Z	9446.90
Oct 25 '28	Z	1150—
Oct 26 '28	Z	5450—

(Testimony of James A. Kammerdiner.)

Citizens National Trust & Savings Bank—(Continued)

Oct 29 '28	Z	150—
Nov 5 '28	Z	2030.20
Nov 9-1928	Z	401.07
Nov 20 '28	Z	4037.33
Dec 11 '28	P	2150.50
Dec 13 '28	P	1750—
Dec 17 '28	Z	1100—
12-31-28	Dup	4622.40
Jan 2 '29	Z	2072.88
Jan 19 '29	(Illeg.)	4290.65
Feb 2 '29	(Illeg.)	750—
Feb 13 1929	R	4000—
Feb 18 '29	(Illeg.)	500—
Mar 8 '29	(Illeg.)	2550—
Mar 21 '29	(Illeg.)	2774.40
3-4-29	Dup	1268.72
Mar 27 1929	(Illeg.)	6350—
Apr 9 '29	(Illeg.)	1379.35
4-9-29	Dup	300—
Apr 15 '29	(Illeg.)	3383.26
Apr 19 '29	(Illeg.)	726.65
Apr 22 '29	D	2300—
Apr 25 '29	M	4086.84
Apr 30 '29	M	1300—
May 13 '29	(Illeg.)	446—
4-26-29	Dup	300—
May 16 '29	M	3267.50
May 18 '29	I	523.08
May 20 '29	I	800—
May 27 1929	M	2200—
May 29 '29	I	1042.92
Jun 12 '29	I	6715.55
Jun 17 '29	I	2250—
Jul 19 1929	B	2504.73
Jul 24 '29	B	950—
Jul 24 '29	(Illeg.)	800—
Jul 31 '29	B	1350—
Aug 1 '29	B	150—

(Testimony of James A. Kammerdiner.)

Citizens National Trust & Savings Bank—(Continued)

Aug 3 '29	B	2500—
Aug 9 '29	(Illeg.)	525—
Aug 10 '29	(Illeg.)	1950—
Aug 12 '29	B	20000—
Aug 13 '29	(Illeg.)	2450—
6-22-29	Dup	2350—
7-15-20	Dup	4000—
Aug 19 '29	B	1039.34
Aug 30 1929	(Illeg.)	2400—
Sep 17 1929	(Illeg.)	1236.48
7-1-29	Dup	750—
7-11-29	Dup	900—
10-10-29	Dup	1350—
10-16-29	Dup	3404.97
Oct 19 1929	(Illeg.)	1000—
Nov 1 '29	L	1400—
Nov 13 1929	F	2496—
Nov 15 1929	I	1500—
Nov 19 '29	W	1363.50
Nov 21 1929	I	1400—
Nov 27 1929	I	1350—
Dec 9 1929	I	1050—
9-30-29	Dup	2710—
12-5-29	Dup	800
Dec 13 1929	I	3325
Dec 14 1929	I	1725
Dec 31 1929	I	650
17	Dup	1260—
18	Dup	350—
Dec 20	Dup	1437.75
Jan 3 1930	W	1395—
Jan 6 1930	I	3000—
Jan 22 1930	I	300
Jan 23 1930	I	1450
Jan 24 '30	Z	724.41
Feb 14 1930	I	1467.36
Feb 28 1930	I	389.88
Mar 10 '30	I	600

(Testimony of James A. Kammerdiner.)

Citizens National Trust & Savings Bank—(Continued)

Mar 13 '30	I	550
Mar 19 '30	I	800
Mar 21 '30	I	800—
Mar 28 '30	W	1650—
Apr 7 '30	I	600—
Apr 1 '30	I	1725
Apr 21 '30	I	2900—
Apr 24 '30	I	2425—
Apr 25 '30	I	1865.36
May 12 '30	I	2082.17
May 27 '30	I	540
Jun 21 '30	I	1600—
Jun 24 '30	I	3220
Jun 25 '30	I	800—
Jun 28 '30	I	1300
Jul 3 '30	I	818.75
Jul 8 '30	I	1000
Jul 12 '30	I	700—
Jul 16 '30	I	3484.15
Jul 19 '30	I	1500
Jul 22 '30	I	3534.12
Jul 24 '30	I	1850.50
Jul 26 '30	I	400

[Endorsed]: Filed Dec. 29, 1941.

Mr. Mitchell: The next one is issued by Bank of Italy National Trust & Savings Association, Fullerton Branch, Fullerton, California, Savings Account No. 5551, issued to "Jas. Kammerdiner or Mrs."

The first entry is August 16, 1929, and the last entry is September 21, 1931.

(Testimony of James A. Kammerdiner.)

Was that a savings or checking account, Mr. Kammerdiner?

Mr. Bloom: Objected to. The book speaks for itself. It says a savings account.

Mr. Mitchell: The witness would know what the account was. Perhaps the book shows.

Mr. Bloom: It says "Savings Account."

The Court: That is savings account No. 207.

Mr. Mitchell: That is offered as Defendant's Exhibit next.

The Court: It may be received as Exhibit 4, subject to the same objection which is overruled.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 4.")

DEFENDANT'S EXHIBIT No. 4

Fullerton Branch

BANK OF ITALY

National Trust & Savings Association

Savgs. Acct. No. 5551

JAS. KAMMERDINER or MRS.

Date	Teller	Withdrawn	Deposited	Balance
Aug 16 1929			1376.39	1376.39
Sept 3 1929	L		691.62	2062.01*
10-29-29	L		199.75	2267.76
10-29-29	L		249.75	2517.51*
Dividend 51, Dec 31, 1929			27.56	2245.07
2-21-30	S		179.97	2785.04*
Jun 18 1930		2500—		225.04

(Testimony of James A. Kammerdiner.)

Bank of Italy—(Continued)

Date	Teller	Withdrawn	Deposited	Balance
Dividend 52, June 30, 1930			53.30	278.34
6/10/30—Dupl.			599.75	878.09
Aug 21/30—Dupl			147.22	1025.31
Aug 2 1930—For'd				1025.31
Aug 29/30—Dupl			399.75	1425.06*
Aug 30/30—Dupl			349.15	1774.81
Sept 15/30—Dupl			199.75	1974.56*
Div. 53, Dec. 31, '30			29.51	2004.07
Dec 20 1930		2000—		4.07
2-27-31 Dup	J		99.89	103.96
Div. 53, Dec. 31, 1930			1.07	105.03
8-21-31				97.75
Sep 21 1931		202.78		202.78

*[Printer's Note]: Illegible because of perforations through figures.

[Endorsed]: Filed Dec. 29, 1941.

Mr. Mitchell: The defendant will offer also a similar book entitled "Head office, Merchants National Trust and Savings Bank of Los Angeles, Sixth and Spring Streets, in special ordinary account with Jas. or Mrs. Kammerdiner or the survivor of either of them."

The first entry is January 7th, 1927, and the last [38] entry June 22nd, 1928.

The Court: It may be received as No. 5.

(Testimony of James A. Kammerdiner.)

Mr. Bloom: Same objection.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 5.")

DEFENDANT'S EXHIBIT No. 5

Head Office

MERCHANTS NATIONAL TRUST AND SAVINGS BANK OF LOS ANGELES

Sixth and Spring Streets
Los Angeles

In Special Ordinary Account With

JAS. or MRS. JAS. KAMMERDIMER

or the survivor of either of them

January 7 1927		C	500—
Feb 7 1927		J	3447.38
1-26	Dup		250—
Mar 12 1927		J	1500—
Mar 19 1927		J	2500—
Oct 15	Dup		250—
Sept 1	Dup		347—
30	Dup		1000—
Dec 10 '27		McCarty	3269.74
Aug 19-27	Dup		1000—
Nov 28-27	Dup		3640.50
Dec 15 '27		McCarty	8358.10
Mar 22 '29		Paepke	800—
Mar 26 '28		McCarty	2175—
May 11 '28		McCarty	1335.25
July 14	Dup		150—
Jul 23 '28		McCarty	910.40
June 22	Dup		1700—

[Endorsed]: Filed Dec. 29, 1941.

(Testimony of James A. Kammerdiner.)

Mr. Mitchell: The next one is issued by the Security Trust & Savings Bank, Commercial Account, Western and Beverly Branch. The number of the account is 765, issued to "Jas. Kammerdiner or Mrs. Jas. Kammerdiner."

The first entry is January 23, 1926, and the last entry August 19th, 1926.

The Court: It may be received.

Mr. Bloom: Same objection.

The Court: The objection is overruled.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 6.")

DEFENDANT'S EXHIBIT No. 6

SECURITY TRUST & SAVINGS BANK

No. 765

Commercial Account with

JAS. KAMMERDINER or MRS. JAS. KAMMERDINER

This Account Does Not Bear Interest

Jan 23 '26	(Illegible)	15,875.77
Feb 24 '26	J	5,582.99
Feb 25 '26	CD	947—
Mar 15 '26	Vchrs. Retd.	11,780.82
May 1 '26	J	150—
May 3 '26	J	1,601.61
Jun 9 '26	(Illegible)	525—
Jul 14 '26	ET	299.80
Jul 15 '26	ET	550.00
Aug 18 '26	(Illegible)	(Illegible)

[Endorsed]: Filed Dec. 29, 1941.

(Testimony of James A. Kammerdiner.)

Mr. Mitchell: The next deposit book is issued by the Citizens Trust & Savings Bank, Western Avenue Branch, Los Angeles, California, Term Account No. 3667, issued to "Mrs. Jas. Kammerdiner James Kammerdiner." Just the two names, nothing between the names.

The Court: Seven.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 7.")

DEFENDANT'S EXHIBIT No. 7

Always Bring This Book With You

CITIZENS TRUST & SAVINGS BANK

Book No. 2
Term No. 3667

This Account Is Not Subject to Check

In Term Account With

MRS. JAS. KAMMERDINER
JAMES KAMMERDINER

No payments will be made except upon presentation of this book

Date	Withdrawn	Deposits	Balance
Apr 24 '28	Brought Fwd		23,607.07
Apr 30 '28	*	550—	24,157.07
May 4 '28	*	192.51	24,349.58
May 9 '28	*	245—	24,594.58
May 12 '28	*	72.10	24,666.68
May 23 '28	*	35.43	24,702.11
Jun 1 '28	*	250—	24,952.11
Jun 6 '28	*	390—	25,342.11
Jun 9 '28	*	752.60	26,094.71
Jun 19 '28	*	26—	26,120.71

(Testimony of James A. Kammerdiner.)

Citizens Trust & Savings Bank—Book No. 2—(Continued)

Date		Withdrawn		Deposits	Balance
Jul 2 '28	*			150—	26,270.71
Interest to July 1, 1928				429.31	26,700.02
Jul 20 1928	*			306.07	27,006.09
Jul 30 '28	*			400—	27,406.09
Sep 15 '28	*			110—	27,516.09
Sep 19 '28	*			200—	27,716.09
Sep 26 '28	*			616.21	28,332.30
Oct 4 '28	*			24.75	28,357.05
Nov 5 '28	*			133.51	28,490.56
Nov 13 '28	*		x	990.64	29,481.20
Jan 3 1929	*			6.25	29,487.47
Interest to Jan. 1, 1929				550.57	30,038.04
Jan 7 '29	*			462	30,500.04
Jan 22 '29	*			1,182.50	31,682.54
Jan 26 '29	*			750—	32,432.54
Feb 8 '29	*			40—	32,472.54
Feb 18 '29	*			153.59	32,626.13
Mar 8 '29	*	Compared		40—	32,666.11
Apr 5 '29	*			320.35	32,986.46
Apr 8 '29	*			200—	33,186.46
Apr 14 '29	*			225	33,411.46
Apr 19 '29	*			38.93	33,450.39
May 1 '29	*			600	34,050.39
May 7 '29	*			87.50	34,137.89
May 20 '29	*			1,053.35	35,191.24
May 27 1929	M			700—	35,891.24
May 29 '29	I			100—	35,991.24
Jun 13 '29	I			41.50	36,032.74
Jun 17 '29	I			450—	36,482.74
Jul 6 '29	I			400	36,882.74
Interest to July 1, 1929				657.78	37,540.52
Jul 6 '29	I			37.50	37,578.02
Aug 9 '29	I			249.50	37,827.52
Aug 12 '29	B	20,000—			17,827.52
Aug 13 '29	W			228.75	18,056.27
Aug 27 1929	I			174	18,230.27
Sep 12 '29	W			137.50	18,367.77

(Testimony of James A. Kammerdiner.)

Citizens Trust & Savings Bank—Book No. 2—(Continued)

Date		Withdrawn	Deposits	Balance
Sep 30 1929	*		198.66	18,566.43
Sep 30 '29	W		237.50	18,803.93
Oct 10 1929	I		41.50	18,845.43
Oct 19 1929	I		1,350—	20,195.43
Nov 1 '29	L		82.33	20,277.76
Nov 7 1929	T		37.50	20,315.26
Dec 3 '29	L		24—	20,339.26
Dec 5 '29	*		240.55	20,579.81
Jan 6 1939	I		37.50	20,617.31
Interest Jan. 1, 1930		Compared	356.54	20,973.85
Jan 17 1930	I		1,775	22,748.85
Feb 4, 1930	I		437.50	23,186.35
Feb 20 1930	I		501.35	23,687.70
Mar 5 '30	*		337.50	24,025.20
Mar 10 '30	I		175	24,200.20
Mar 21 '30	I		800	25,000.20
Mar 28 '30	W		323.34	25,323.54
Apr 3 '30	I		337.50	25,661.04
Apr 7 '30	I		500	26,161.04
May 2 '30	I		587.50	26,748.54
Jun 3 '30	A		470—	27,218.54
Jun 18 '30	F	10,000—		17,218.54
Jun 18 '30	I	5,000		12,218.54
Interest to July 1, 1930			261.70	12,480.24
Nov 19 '30	I		18.75	12,498.99
Interest Jan 1, 1937		Compared	249.70	12,748.69
Feb 3 '31	K		37.50	12,786.19
Interest July 1, 1931		Compared	244.78	13,030.97
Jul 8 '31	O		1.00	13,031.97
Jul 9 '31	*	13,030.97		1.00

*[Printer's Note]: Tellers' initials in this book illegible and omitted.

[Endorsed]: Filed Dec. 29, 1941.

(Testimony of James A. Kammerdiner.)

Mr. Mitchell: The first entry is April 24th, 1928 and the last entry is July 9th, 1931. [39]

Mr. Bloom: Same objection.

The Court: It will be received as 7.

Mr. Mitchell: The next one is issued by the Security Office of the Security-First National Bank of Los Angeles, Account No. S 501166, in account with "Myrtle B. Kammerdiner or Jas. Kammerdiner," and stamped "Payable to either or the survivor of them." It is a special savings account.

The Court: All right. It may be received as 8, subject to the same objection which is overruled.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 8.")

DEFENDANT'S EXHIBIT No. 8

Security Office

SECURITY-FIRST NATIONAL BANK OF LOS ANGELES
Los Angeles

No. S501166

Special Savings Account with

MYRTLE B. KAMMERDINER or JAS. KAMMERDINER

Payable to Either or the Survivor of Them

Subject to the By-Laws Governing
Special Savings Accounts

Jul 7 '31	(Illegible)	14,861.34
July 30	Int.	3.80
Aug 29	Int.	30.95
Sept. 29	Int.	31.01
Oct. 30	Int.	31.08

(Testimony of James A. Kammerdiner.)

Security-First National Bank of Los Angeles—(Continued)

Nov. 28	Int.	31.14
Dec. 30	Int.	31.20
Jan. 29	Int.	29.20
Feb. 27	Int.	28.22
Mar. 30	Int.	28.28
Apr. 29	Int.	25.11
May 28	Int.	11.41
June 29	Int.	11.43
July 29	Int.	11.45
Aug 29	Int.	11.48
Sept. 29	Int.	11.50
Oct. 29	Int.	11.53
Nov. 29	Int.	11.55
Dec. 30	Int.	11.57
Mar 17 '33	(Illegible)	10,650—
Mar 20 '33	CP	12,030.00
Mar 23 '33	(Illegible)	4,070.00

[Endorsed]: Filed Dec. 29, 1941.

Mr. Mitchell: The next book is issued by the Fullerton Branch of the Bank of America, stamped over "Farmers & Merchants National Bank, Fullerton, California." It reads "In Account with Jas. Kammerdiner."

The first entry is May 15th, '25, and the last entry is November 17th, '25.

Mr. Bloom: Same objection.

By Mr. Mitchell:

Q. Mr. Kammerdiner, is that the same account to which you referred as being carried in your name, the account for your living expenses or

(Testimony of James A. Kammerdiner.)

emergency, as you stated, the account you kept in Fullerton?

A. I believe I had more money than that there. Haven't you got another book there?

Q. No other that far back. [40]

A. What is that date?

Q. That is 1925.

A. What is the first date on that?

Mr. Bloom: 1925?

Mr. Mitchell: May, 1925.

The Witness: We got one that should be earlier than that.

By Mr. Mitchell:

Q. This is in your name only?

A. Yes, but there ought to be one earlier.

The Court: Maybe the Government is holding out some of your check books.

Mr. Mitchell: These books were just handed me by Mr. Bloom. I haven't seen them before.

The Court: It may be received.

Mr. Mitchell: It is offered for what it is worth.

The Witness: I had more money in it than——

The Court (Interrupting): All right. Whatever you had, it is your account anyway.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 9.")

(Testimony of James A. Kammerdiner.)

DEFENDANT'S EXHIBIT No. 9

FULLERTON OFFICE—BANK OF AMERICA

Farmers & Merchants National Bank
Fullerton, California

10351

In Account With

JAS. KAMMERDINER

My 15 '25	R.C.R.	7,477.40
May 18 '25	Taylor	1,288.05
My 29 '25	R.C.R.	1,750.00
Jun 12 '25	P	1,350—
Ju 16 '25	R.C.R.	1,350—
Ju 17 '25	R.C.R.	1,827.70
Jun 20 '25	P	1,144.93
Jun 26 '25	P	1,241.92
Jul 6 1925		1,000
Jul 7 '25	P	1,375.60
Jul 16 '25	P	604.50
Jul 16 '25	P	4,129.03
Jul 24 '25	P	2,400—
Aug 25 '25	S	750—
Aug 25 '25	S	1,850—
Oct 3 '25	S	1,300—
Nov 17 '25	P	1,330.02

[Endorsed]: Filed Dec. 29, 1941.

Mr. Mitchell: The next book is issued by the Western and Beverly Branch of the Security-First National Bank of Los Angeles. The number is 65619. "Term Savings Account with Jas. A. Kammerdiner or Myrtle B. Kammerdiner."

(Testimony of James A. Kammerdiner.)

The first entry is April 26, 1934 and the last is [41] September 17, 1935.

The Court: All right.

Mr. Bloom: Same objection.

The Court: It may be received.

The Clerk: Ten.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 10.")

DEFENDANT'S EXHIBIT No. 10

Western & Beverly Branch

SECURITY-FIRST NATIONAL BANK OF LOS ANGELES
Los Angeles

No. 65619

Term Savings Account with

JAS. A. KAMMERDINER or MYRTLE B. KAMMERDINER

This account is not subject to check

Date	Entered by	Withdrawn	Deposited	Balance
Apr 26 '34	*		1,808.91	1,808.91
Aug 1 '34	*		527.71	2,336.62
Aug 27 '34	*		# 100.80	2,437.42
9-6-34	*		544.01	2,981.42
Sep 17 '34	*		1,285.65	4,267.07
Sep 21 '34	*		133.23	4,400.30
10-11-34	Lea		67.20	4,467.50
Oct 18 '34	*		150—	4,617.50
11-14-34	*		67.06	4,684.56
Jan 2 '35	#Deposit should be	101.80	1—	4,685.56
Dec. 31, 1934, Interest			56.10	4,741.66
1-2-35	*		66.80	4,808.46
1-9-35	*		66.80	4,875.26

(Testimony of James A. Kammerdiner.)

Security-First National Bank of Los Angeles—(Continued)

Date	Entered by	Withdrawn	Deposited	Balance
Fwd.				4,875.26
Jan 19 '35	*		1,065.83	5,941.09
Feb. 14 '35	*		155.37	6,096.46
2-11-35	*		66.17	6,162.63
Feb 26 '35	*		650—	6,812.63
6-30-35	Int.		82.22	6,894.85
To adj. extension 9-6-34				6,894.86
3-7-35	*		65.89	6,960.75
Sep 17 '35	*	6,960.75		

*[Printer's Note]: Tellers' initials in this book illegible and omitted.

[Endorsed]: Filed Dec. 29, 1941.

Mr. Mitchell The next is issued by the Guaranty Office of the Security-First National Bank of Los Angeles, Number 288844—"Commercial Account with Jas. Kammerdiner."

The first entry is March 17, 1933, $20,000.00; the last entry is August 14th, 1933, $12.45.

That is offered as the next Exhibit.

Mr. Bloom: Same objection.

The Court: That will be Government's 11.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 11.")

(Testimony of James A. Kammerdiner.)

DEFENDANT'S EXHIBIT No. 11

Guaranty Office

SECURITY-FIRST NATIONAL BANK OF LOS ANGELES
Los Angeles

No. 288844

Commercial Account with

JAS. KAMMERDINER

This Account Does Not Bear Interest

Mar 17 '33	(Illegible)	20,000—
Aug 14 1933	(Illegible)	1,200—
Aug 14 1933	(Illegible)	12.45
~~Oct 5 '35~~	~~(Illegible)~~	~~10,539.86~~
~~Oct 7 '35~~	~~(Illegible)~~	~~8,000~~

out.

[Endorsed]: Filed Dec. 29, 1941.

By Mr. Mitchell:

Q. Mr. Kammerdiner, in which of these accounts were [42] the receipts from the rotary jar business placed? Can you identify them, please?

A. I don't know if I would be able to do that. You know this banking business——

The Court (Interrupting): Speak louder. There is no secret. You can't whisper.

The Witness: My voice is not too strong.

The Court: That is all right. I will sit right here. It doesn't make any difference.

The Witness: The banking business, a good part of it, was done by my wife. She did the office work.

(Testimony of James A. Kammerdiner.)

By Mr. Mitchell:

Q. And handled the finances?

A. Mostly. I never did have a bit of schooling in my life. I never went to school a straight week in my whole life. I never was in a high school and never was on a college grounds.

Q. But your wife was educated?

A. My wife had some education. She worked in an office here in the city.

Q. As a stenographer, before you were married?

A. Yes. And the bookkeeping work and things that did need office work, I wasn't close to that.

Q. Was that true during the time that the boarding house was run, also?

A. Well, it had to be true during that time. [43]

Q. Just the same as during the rotary jar business? A. Yes.

Q. But you can't tell exactly which of these accounts——

A. (Interrupting): I can tell some of them. I ought to be able to tell from the size of them.

Q. You are now looking at a term account, which is marked Defendant's Exhibit 1, covering the period from August, 1921, to October, 1935. Does the date help you any?

A. Yes, sir, it would.

Q. Between '21 and '35?

A. Yes. I imagine a good part of that was jar business.

Q. Yes.

(Testimony of James A. Kammerdiner.)

A. Now, I think practically all of this was jar business.

Q. Now, let's see.

You now have Defendant's Exhibit No. 3, one on the Citizens Bank, commencing in November, '25 and ending July, '30, the Citizens Trust & Savings Bank.

A. And I think part of this is jar business.

Q. Now, this one is Defendant's Exhibit No. 4, Bank of Italy, Fullerton Branch, Savings Account, from August 16, '29 to September, '31.

A. Part of this and along in there was jar business. (Indicating).

Q. This is Defendant's Exhibit No. 2, also a joint [44] account, First National Bank, Fullerton, California. I don't know whether it is savings or not. It doesn't indicate whether it is. It starts November, '24 and ends December, '25.

A. This is jar business.

Q. How about this one, Exhibit 6, Western Avenue? A. That is jar business.

Q. That is jar business? A. Yes.

Q. This is Exhibit 6, Security Trust & Savings Bank, Western and Beverly Branch, and begins January, '26 and ends August, '26, also a joint account: "Mr. James Kammerdiner, or Mrs. James Kammerdiner."

What did you say about this?

A. I wouldn't say much about that. I don't know.

(Testimony of James A. Kammerdiner.)

Q. It is Defendant's Exhibit No. 5. You don't recall about that one?

A. No, sir. This, I think, is mostly jar business.

Q. Referring to Defendant's Exhibit 7, "Mrs. Jas. Kammerdiner and Jas. Kammerdiner."

Referring to Exhibit No. 8, now.

A. Is that " '33" or " '38"?

Q. That is " '33". [45]

A. That is jar business, too. I think it is mostly all jar business.

Q. That was referring to Exhibit No. 8, "Myrtle B. Kammerdiner or Jas. Kammerdiner."

A. We had other income that might have been throwed in here, but the majority of it is jar business.

Q. Jar business receipts? A. Yes.

Q. You are now looking at Exhibit 9, Defendant's 9, in your name only? A. Yes.

Q. Did any jar business receipts go into that account?

A. I don't believe so. That is when I worked over on the lease.

And this is jar business, too.

Q. Referring to Exhibit 10, "Jas. A. Kammerdiner or Myrtle B. Kammerdiner."

A. This one, I don't know about either.

Q. Referring to Exhibit 11, "Jas. Kammerdiner," only.

Now, Mr. Kammerdiner, I think you testified on

(Testimony of James A. Kammerdiner.)

direct examination that it is hard to tell the value of your patent when you first invented it?

A. Yes.

Q. The basic patent? A. Yes.

Q. That was in 1922 that it was invented and then it [46] was patented in '23; is that correct?

A. Yes, sir.

Q. How soon after that was its value established?

A. Well, I would say very soon after that.

Q. As soon as receipts and profits started coming in? A. Yes.

Q. Was that about '23 or '24?

A. I believe it was close, the first of '24.

Q. The beginning of 1924? A. Yes, sir.

Q. And, Mr. Kammerdiner, did you make investments, you and your wife, with these profits from the rotary jar business? Did you purchase real estate or stocks or bonds or other property?

A. Yes.

Mr. Mitchell: With counsels' and the Court's permission, I might offer the certified copy of the Estate Tax Return in evidence at this time, out of order, because I do want to cross examine the witness.

The Court: All right. It may be received as Government's Exhibit 12.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 12.")

(Testimony of James A. Kammerdiner.)

DEFENDANT'S EXHIBIT No. 12

[Page 3]

GROSS ESTATE
Schedule A
Real Estate

Instructions

Real estate, improved or unimproved, should be so described and identified that upon investigation by an Internal Revenue officer, it may be readily located for inspection and valuation. For each parcel of real estate there should be given the area and, if the parcel is improved, a short statement of the character of the improvements. For location, such details as the following may be necessary:

City or Town Property.—Street and number, ward, subdivision, block, and lot, etc.

Rural Property.—Township, range, block and lot, street, landmarks, etc.

If any item of real estate is subject to mortgage, the unpaid balance of the mortgage should be shown below under "Description." The full value of the property and not the equity must be extended in the value column. The mortgage should be deducted under Schedule J of this return.

Real property which the decedent has contracted to purchase should be listed in this schedule. The full value of the property and not the equity must be extended in the value column. The unpaid portion of the purchase price should be deducted under Schedule I of this return.

The value of dower, curtesy, or a statutory estate created in lieu thereof, is taxable, and no reduction on account thereof or on account of homestead or other exemption should be made in returning the value of the real estate.

All rents accrued and unpaid should be apportioned to the date of death, whether due at that time or not.

For further instructions see article 2 and articles 10 to 13, inclusive, Regulations No. 80.

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Did the decedent, at the time of death, own any real estate? (Answer "Yes" or "No.")—No.

Item No.	Description	Assessed value for year of decedent's death	Fair market value at date of decedent's death	Rents accrued to date of death
		$	$	$
	None (See Schedule "D-1")			
	Totals	$		$

Grand Total (also enter under the Recapitulation, Schedule L).....$ 00

(If more space is needed, insert additional sheets of same size)

Estate of Myrtle B. Kammerdiner

Date of death April 4, 1935

A

[Page 8]

SCHEDULE D-1

Jointly Owned Property

Instructions

All property of whatever kind or character, whether real estate, personal property, bank accounts, etc., in which the decedent held at the time of his death an interest either as a joint tenant or as a tenant by the entirety, must be returned under this schedule.

The full value of the property must be included in the fourth column, unless it can be shown that a part of the property originally belonged to the other tenant or tenants and was never received or acquired by the other tenant or tenants from the decedent for less than an adequate and full consideration in money or money's worth.

Where it is shown that the property or any part thereof, or any part of the consideration with which the

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

property was purchased, was acquired by the other tenant or tenants from the decedent for less than an adequate and full consideration in money or money's worth, there should be omitted from this schedule only so much of the value of the property as is proportionate to the consideration furnished by such other tenant or tenants.

Where the property was acquired by gift, bequest, devise, or inheritance by the decedent and spouse as tenants by the entirety, then only one-half of the value of the property should be listed on this schedule. Where the property was acquired by the decedent and another person or persons by gift, bequest, devise, or inheritance as joint tenants, and their interests are not otherwise specified or fixed by law, then there should be entered on this schedule only such fractional part of the value of the property as is obtained by dividing the full value of the property by the number of joint tenants.

If the executor contends that less than the value of the entire property is includable in the gross estate for purposes of the tax, the burden is upon him to show his right to include such lesser value, and in such case he should make proof of the extent, origin, and nature of the decedent's interest and the interest of decedent's cotenant or cotenants.

If the property consists of real estate, the assessed value thereof for the year of death should be shown in the second column, headed "Description of property." In the third column should be entered the fair market value of the whole property, even though only a fractional part thereof is returnable in column 4. In the fourth column should be entered the amount to be included in the gross estate pursuant to the instructions given above. In the fifth column should be entered the rents, interest, and other income accrued to the date of decedent's death in the same proportion as the amount entered in column 4 bears to the amount entered in column 3.

Property in which the decedent held an interest as a

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

tenant in common should not be listed here, but the value of his interest therein should be returned under Schedule A, if real estate, or if personal property, under the appropriate schedule. The value of the decedent's interest in partnerships should not be included here, but under Schedule D-2 on the following page, designated as "Other Miscellaneous Property."

For further instructions, see articles 22 and 23, Regulations No. 80.

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date of death
		$	$	$
	Totals		$	$

Grand Total (also enter under the Recapitulation, Schedule L).....$

(If more space is needed, insert additional sheets of same size)

Estate of Byrtle B. Kammerdiner

Date of death—April 4, 1935.

D-1

SCHEDULE "D-1"

Jointly Owned Property

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date death
	Real Estate: (Los Angeles County)			
1.	That portion of Lot Three (3) of the South Gardena Tract, as per map recorded in Book 43, page 39 of			

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date death
	Real Estate: (Los Ang. Co.)—(Cont'd.)			
	Miscellaneous Records in the office of the Recorder of said County described as follows: Beginning at the Northwest corner of said Lot Three (3); thence North 88° 06′ East on the Northerly line of said Lot Three (3), Eight Hundred Seventeen and seventy hundredths (817.70) feet to the Northeast corner of said Lot Three (3); thence South, on the East line of said Lot Three (3), One Hundred Twenty - eight (128.00) feet; thence South 87° 59′ West, Eight Hundred Fourteen and five hundredths (814.05) feet, to the Westerly line of said Lot Three (3); thence North 1° 37′ West, on said Westerly line of Lot Three (3), One Hundred Twenty-nine and sixty-five hundredths (129.65) feet to the point of beginning. Above named Northwest corner being on the East-			

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date death
	Real Estate: (Los Ang. Co.)—(Cont'd.)			
	erly line of Main Street (60 feet wide). Subject to Right of way for constructing and maintaining electric line consisting of poles, cross arms and other appliances, to be set one foot west of East property line, in favor of Southern California Edison Company, a corporation, Los Angeles, California. This property has been registered under the Torrens title and is covered by certificate No. CC-27772, issued in the name of James A. Kammerdiner and Myrtle B. Kammerdiner as joint tenants.....$	1,920.00	$ 960.00	
2.	An undivided one-third (⅓) interest in and to: Lot Twenty-five (25), except the North Forty-nine (49) feet thereof, and also the North Forty-one and 05/100 (41.05) feet of lot (32), all of Tract Number Eight Hundred Fifty-six (856) as per map recorded in Book 16, at Page 96 of			

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date death
	Real Estate: (Los Ang. Co.)—(Cont'd.)			
	Maps, in the office of the County Recorder of said County, except from all of said premises the West One Hundred Forty-two and 59/100 (142.59) feet thereof	300.00	150.00	
	Lot Fifteen (15) of Tract Number Eight Hundred Fifty-six (856) in the Rancho Sausal Redondo, as per map recorded in Book 16, Page 96 of Maps, in the office of the County Recorder of Los Angeles County	750.00	375.00	
3.	Lot One (1) of Tract No. 5291, as per map recorded in Book 54, Page 22 of Maps, in the office of the County Recorder of said County of Los Angeles. Subject to conditions, restrictions, and rights of way of record	4,000.00	2,000.00	
4.	Lot Seven hundred thirty (730) of Tract Fifty-four hundred and forty-five (5445) as recorded in Book 59, pages 69 and 70 of Maps, records of Los Angeles County	2,550.00	1,275.00	

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date death
	Real Estate: (Los Ang. Co.)—(Cont'd.)			
5.	Lot Five Hundred Seventeen (517), Tract 5445, County of Los Angeles, State of California, as per map recorded in Book 59, pages 69 and 70 of Maps, in the office of the County Recorder of said County	3,250.00	1,625.00	
6.	Lot Two Hundred Fifty-eight (258), Tract 5445, County of Los Angeles, as per map recorded in Book 59, pages 69 and 70 of Maps, in the office of the County Recorder of said County	3,000.00	1,500.00	
7.	Lot Eighty (80), of Tract Number Fifty-four Hundred Forty-five (5445), as per map recorded in Book 59, pages 69 and 70 of Maps, in the office of the County Recorder of said County	3,750.00	1,875.00	
8.	Lot Seven Hundred Thirty-one (731) of Tract No. 5445, (known as Eastmont) as per map thereof recorded in Book 59, pages 69 and 70 of Maps in the of-			

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date death
	Real Estate: (Los Ang. Co.)—(Cont'd.)			
	fice of the County Recorder of said County..... Subject to reservation for right of way over rear five (5) feet for pole line for electric pipe lines, telegraph lines, with right of entry.	3,500.00	1,750.00	
9.	Lot Thirteen (13), in Tract No. 1441, as per map recorded in Book Twenty, pages 30 and 31, of Maps, in the office of the County Recorder of said Los Angeles County	400.00	200.00	
10.	Lot Six Hundred Seventeen (617) of Tract Number Eighty-four Hundred Ninety-eight (8498) as per map recorded in Book 95, pages 53 and 55 of Maps, in the office of the County Recorder of said County....	15,500.00	7,750.00	
11.	Lots Twenty (20) and Twenty-one (21) of the Vendome Park Tract, in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in Book 8, page 22 of Maps, in the			

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date death
	Real Estate: (Los Ang. Co.)—(Cont'd.)			
	office of the County Recorder of said County.....	6,750.00	3,375.00	
12.	The West Forty (40) feet of Lot Thirteen (13) in Block One (1) of La Paloma Addition, as per map recorded in Book 5, page 163 of Maps, in the office of the Recorder of said County	2,250.00	1,125.00	
13.	Lot Six (6) of Tract No. 1247, as per map recorded in Book 17, page 169 of Maps, Records of Los Angeles County	5,000.00	2,500.00	
14.	Lot Forty-seven (47) of I. A. Weid's Subdivision, of the Southeast quarter (SE¼) of Section 14, Township 1 South, Range 14 West, S. B. B. & M., as the same appears of record in Book 13, page 39, of Miscellaneous Records in the office of the County Recorder of Los Angeles County	10,760.00	5,380.00	
15.	Lot Fifty-three (53) in Tract 4685, as the same appears of record in Book 51, page 13, of Maps, rec-			

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date death
	Real Estate: (Los Ang. Co.)—(Cont'd.)			
	ords of Los Angeles County	5,000.00	2,500.00	
16.	Lot Three (3), Tract 6206, in the City of Montebello, as per map in Book 64, page 73, of Maps, in the records of the County of Los Angeles	1,800.00	900.00	
	Real Estate (Orange County)			
17.	All that real property situated in the Rancho La Habra, County of Orange, State of California, described as follows: The West one-half (W½) of the Southeast quarter (SE¼) of the Southeast quarter (SE¼) of the Northeast quarter (NE¼) of Section Five (5), Township Three (3) South, Range Ten (10) West, S. B.B.&M., and (5) shares of water stock; subject to covenants, conditions, reservations, restrictions, rights, rights of way and easements of record.....	6,250.00	3,125.00	
18.	All that real property situated in the County of Orange, State of Califor-			

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date death
	Real Estate (Orange Co.)—(Cont'd.)			
	nia, described as follows: An undivided one-half (½) interest in and to the following: Parcel 1. Lot Three (3) in Block One (1) of the "Yorba Linda Tract" as shown on a Map recorded in Book 5, pages 17 and 18 of Miscellaneous Maps, records of Orange County, California, containing 7.01 acres, more or less. and Parcel 2. That portion of Lot Four (4) in Block One (1) of the "Yorba Linda Tract", as shown on a map recorded in Book 5, pages 17 and 18 of Miscellaneous Maps, records of Orange County, California, lying North of the Northerly right of way line of the Pacific Electric Railway bounded and described as follows: Beginning at the point of intersection of the North Line of said Lot Four (4) in Block One (1) and the said Norther-			

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date death
	Real Estate (Orange Co.)—(Cont'd.)			
	ly line of the right of way of the Pacific Electric Railway; thence along said North line of Lot Four (4) in Block One (1), South 89° 21′ 15″ East to the Northeast corner of said Lot Four (4) in Block One (1) (being a point in the center line of a 60′ street); thence along the East line of said Lot Four (4) in Block One (1) (being the center line of said 60 foot street) South 1° 11′ 40″ East 155.33 feet to said Northerly line of the right of way of the Pacific Electric Railway; thence along said Northerly line of the right of way of the Pacific Electric Railway North 61° 13′ 30″ West 329.33 feet to the point of beginning, containing 0.51 acres, more or less.			
	and			
	Parcel 3. Beginning at the Northwest Corner of Lot Four (4) in Block One (1) of the "Yorba Linda			

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date death
	Real Estate (Orange Co.)—(Cont'd.)			
	Tract," as shown on a map recorded in Book 5, pages 17 and 18 of Miscellaneous Maps, records of Orange County, California, thence along the Easterly line of the Rancho San Juan Cajon de Santa Ana North 4° 09′ 07″ West 357.09 feet to the Southerly line of the right of way of the Pacific Electric Railway; (1); thence along the said Southerly right of way line of the Pacific Electric Railway South 61° 13′ 30″ East 706.59 feet to the North line of said Lot Four (4) in Block One (1); thence along the said North line of Lot Four (4) in Block One (1) South 88° 27′ 02″ West 593.70 feet to the point of beginning, containing 2.43 acres more or less.			
	and			
	Parcel 4. Beginning at the Southwest corner of Lot Two (2) in Block One (1)			

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date death
	Real Estate (Orange Co.)—(Cont'd.)			
	of the "Yorba Linda Tract," as shown on a map recorded in Book 5, pages 17 and 18 of Miscellaneous Maps, records of Orange County, California; thence along the South line of said Lot Two (2) in Block One (1) North 88° 34′ 20″ east 660.43 feet to the Northwest corner of Lot Three (3) in Block One (1) of the Yorba Linda Tract; thence along the West Line of said Lot Three (3) in Block One (1) South 4° 02′ 15″ East 538.43 feet to the Northerly line of the right of way of the Pacific Electric Railway; thence along said Northerly line of the right of way of the Pacific Electric Railway North 61° 13′ 30″ West 784.68 feet to the Easterly line of the Rancho San Juan Cajon de Santa Ana; thence along said Easterly line of the Rancho San Juan Cajon de Santa			

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property decedent's death	Amount to in gross estate	Rents and other income to date death
	Real Estate (Orange Co.)—(Cont'd.)			
	Ana North 4° 09' 07" West 143.29 feet to the point of beginning, containing 5.16 acres, more or less. Subject to the following: Covenants, conditions, restrictions, reservations, rights, rights of ways, and easements of record, if any. Together with 15 shares of Yorba Linda Water Co. stock.....	10,000.00	5,000.00	
19.	All that real property situated in the County of Orange, State of California, described as follows: Parcel 1. Beginning at a point in the Westerly line of the East one-half of the Northeast quarter of the Northwest quarter of Section 20, Township 3 South, Range 9 West, S.B.B.&M., said point being 245 feet Northerly from the Southwest corner of said East one-half; thence Easterly along a line parallel with the Southerly line of said East one-half and the extension thereof 883.6 feet			

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date death
	Real Estate (Orange Co.)—(Cont'd.)			
	to the Easterly line of the Rancho San Juan Cajon de Santa Ana; thence Northerly along said Rancho line 249.9 feet to a point; thence Westerly along a line parallel with the Southerly line of said East one-half, 867.87 feet to the Westerly line of said East one-half; thence Southerly along said Westerly line 249.4 feet to the point of beginning and containing 5.014 acres, more or less.			
	and			
	Parcel 2. An undivided 5/26ths interest in and to the following: Beginning at a point on the Westerly line of the East one-half of the Northeast quarter of the Northwest quarter of Section 20, Township 3 South, Range 9 West, S.B.B.&M., said point being 630.70 feet Northerly from the Southwest corner of said East one-half; thence along a			

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date death
	Real Estate (Orange Co.)—(Cont'd.)			
	line bearing North 85° 24′ East from the Westerly line of said East one-half a distance of 656.57 feet to the point of beginning of a tract of land to be hereinafter designated as the pumping plant site; thence from said point of beginning of the pumping plant site, still bearing North 85° 24′ East a distance of 50.50 feet to a point; thence South 4° 36′ East a distance of 33.00 feet to a point; thence South 85° 24′ West a distance of 50.50 feet to a point; thence North 4° 36′ West a distance of 33.00 feet to the point of beginning of said pumping plant site.			
	and			
	Parcel 3. An undivided one-half interest in the right of way for pipe line for irrigation purposes running Southwesterly from said pumping plant site to the North line of			

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date death
	Real Estate (Orange Co.)—(Cont'd.)			
	the property first herein described. and Parcel 4. A right of way for road purposes over the West 22 feet of that portion of said East one-half of the Northeast quarter of the Northwest quarter not included in Parcel 1 herein. Subject to the following: 1. Taxes for 1934-1935 and all other taxes, assessments, bonds and penalties of record. 2. Covenants, conditions, reservations, restrictions, rights, rights of way and easements of record, if any	3,500.00	1,750.00	
20.	All that real property situated in the County of Orange, State of California, described as follows: That portion of Section 3, Township 4 South, Range 9 West, S.B.B.&M., more particularly described as follows: Beginning at the point of intersection of the center			

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date death
	Real Estate (Orange Co.)—(Cont'd.):			
	line of Cerro Vista Drive with the Southeasterly prolongation of the Northeasterly line of Lot 21, Tract No. 59, as shown on a map thereof recorded in Book 10, page 18, Miscellaneous Maps, Records of Orange County, California, and running thence, from said point of beginning North 75 deg. 48′ East 72.22 feet; thence North 63 deg. 30′ 30″ West 228.63 feet; thence North 42 deg. 18′ West 320.65 feet; thence North 6 deg. 57′ 30″ West 81.91 feet; thence North 51 deg. 53′ 30″ West 261.41 feet; thence North 24 deg. 45′ West 212.00 feet; thence North 32 deg. 39′ 30″ West 203.21 feet; thence North 15 deg. 04′ 30″ West 30.00 feet to a point in the center line of the Santa Ana Canyon Road; thence South 74 deg. 55′ 30″ West 94.74 feet to the P.T. of a curve having a			

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date death
	Real Estate (Orange Co.)—(Cont'd.):			
	radius of 700.00 feet (Engineer's Station 120-33.39); thence Westerly along said curve a distance of 34.24 feet; thence South 17 deg. 52′ 40″ East 1.68 feet to a point in the center line of Santa Ana Canyon County Road as shown on said map of Tract No. 59; thence along the said center line North 80 deg. 04′ 45″ East 119.15 feet; thence leaving said center line and running along the Easterly line of said Lot 21 South 23 deg. 46′ East 402.95 feet; thence South 45 deg. 16′ East 259.44 feet; thence South 26 deg. 52′ East 194.55 feet; thence South 51 deg. 07′ East 356.23 feet; thence South 67 deg. 09′ East 72.45 feet to the point of beginning, containing 1.27 acres of land, more or less. Reserving therefrom the Southerly twenty (20) feet and that portion included			

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date death
	Real Estate (Orange Co.)—(Cont'd.):			
	in the Right of Way of Santa Ana Canyon Road for road purposes.			
	and			
21.	Lot 21, Tract No. 59, containing 7.76 acres more or less	12,500.00	6,250.00	
22.	An undivided one-third (⅓) interest in Lots Three (3), Four (4), Five (5) and Six (6) in Block Fifty-four (54) of Olinda Tract, as per map thereof recorded in Book 31, Page 37, of Miscellaneous Records of Los Angeles County, California. Subject to conditions, restrictions, rights of way and reservations of record	3,250.00	1,625.00	
	Stocks and Bonds			
	Stocks:			
23.	35 shares of Standard Oil Company of California. Certificate No. SF/C139476	1,058.75	529.38	
24.	15 shares Union Oil Association, certificate No. 04720	255.00	127.50	
25.	606 shares Union Oil Company of California Certificate No. LA/O 62602 for 15 shares			

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date death
	Stocks—(Continued):			
	Certificate No. LA/O 57186 for 15 shares Certificate No. LA/O 27067 for 20 shares Certificate No. LA/O 31029 for 32 shares Certificate No. LA/O 41694 for 8 shares Certificate No. LA/O 46640 for 8 shares Certificate No. LA/O 51828 for 8 shares Certificate No. LA 26852 for 100 shares Certificate No. LA 26853 for 100 shares Certificate No. LA 26854 for 100 shares Certificate No. LA 26855 for 100 shares Certificate No. LA 26856 for 100 shares	10,302.00	5,151.00	
26.	100 shares of Security-First National Bank of Los Angeles stock	3,300.00	1,650.00	
	Bonds:			
27.	$20,000 par value U. S. Treasury 3¼% bonds.....	21,500.00	10,750.00	
28.	$26,000 par value U. S. 1st Liberty bonds	26,346.67	13,173.34	

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date death
	Bonds—(Continued):			
29.	$23,100 par value U. S. 4th Liberty bonds	23,735.25	11,867.63	
30.	$4,975 par value Home Owners' Loan Corporation bonds, 3¼%	5,155.34	2,577.67	
31.	10 $1,000 par value bonds issued by the Central Investment Corporation, being Nos. 308 to 317, inclusive	6,500.00	3,250.00	
	Mortgages, Notes and Cash			
	Notes:			
32.	Promissory note dated September 30, 1933, due September 20, 1934, in the principal sum of $750.00, executed by Theresa M. Allen, formerly Theresa M. Caldwell, in favor of James A. Kammerdiner and Myrtle B. Kammerdiner, his wife, as joint tenants, secured by a deed of trust recorded in Book 12474, page 381, Official Records of Los Angeles County	750.00	375.00	
33.	2 promissory notes, each for the sum of $1500.00 bearing interest at 6%, each dated July 1, 1931, payable three and six months,			

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date death
	Notes—(Continued):			
	respectively, after the date thereof, executed by Arthur E. Dubrow and Clarice K. Dubrow in favor of James A. Kammerdiner and Myrtle B. Kammerdiner	No value		
34.	Promissory note dated April 1, 1934, executed by Douglas L. Edmunds and Laura L. Edmunds, unpaid balance $2,700.00.....	2,700.00	1,350.00	
35.	Trust deed note dated September 19, 1934, for $3500.00 made payable to James A. Kammerdiner and Myrtle B. Kammerdiner, husband and wife, as joint tenants with right of survivorship, executed by E. E. Ross and Ida E. Ross, interest at 7%, due in installments of $400.00 or more on September 19, 1935, $400.00 or more on September 19, 1936, and the unpaid balance of principal and interest on September 19, 1937	3,500.00	1,750.00	
36.	Trust deed note dated August 21, 1928, for $5,500.00			

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date death
	Notes and Cash—(Continued):			
	made payable to James A. Kammerdiner and Myrtle B. Kammerdiner, executed by Nellie M. Ritchie, interest at 7%, due August 21, 1931, extended to August 21, 1934, unpaid balance as of April 4, 1935, was $1500.00. Interest paid to August 21, 1934.....	1,500.00	750.00	
37.	Cash:	25,381.50	12,690.75	
38.	Bank Accounts: Security-First National Bank, Security Office, Term No. 501166 7,680.50 Security-First National Bank, Beverly & Western, Term account No. 65619 6,874.53 Security-First National Bank, Beverly & Western, commercial account 14,997.41 Citizens National Trust & Savings Bank, Second & Western 7,776.84			

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date death
	Bank Accounts—(Continued):			
	Security-First National Bank First National Office, Term No. 248595 447.69 Security-First National Bank, Fullerton Branch, Term No. 812..... 2,146.00			
		39,922.97	19,961.49	
	One-half (½) undivided interest in a certain bank account at the Fullerton Branch of the Bank of America National Trust & Savings Association, standing in the name of Ritchie-Kammerer and Kammerdiner, and having a balance as of the date of death of Myrtle B. Kammerdiner, deceased, of $1323.51	661.75	330.88	
39.	$550.00 par value American Express Co. Traveler's checks	550.00	275.00	
40.	$5,000 U. S. Postal Savings certificates Certificates Nos. 1902-26; 1938, for $100; Certificates Nos. 1967-1999 for $100....	5,000.00	2,500.00	

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date death
	Miscellaneous			
41.	Jewelry:			
	1 ladies wrist watch-chips..	210.00	105.00	
	1 ladies ring, diamond and chips	150.00	75.00	
	1 ladies ring, 3 diamonds..	700.00	350.00	
	1 ladies bar pin, 19 diamonds and chips	650.00	325.00	
	Grand Total	$285,809.23	$142,904.64√	

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SCHEDULE D-2

Other Miscellaneous Property

Instructions

Under this schedule include all items of gross estate not returned under another schedule, including the following: Debts due the decedent; interests in business; claims, rights, royalties, pensions; leaseholds, judgments, shares in trust funds; household goods and personal effects, including wearing apparel; farm products and growing crops; livestock, farm machinery, automobiles, etc.

When an interest in a copartnership or unincorporated business is returned, submit in duplicate statement of assets and liabilities as of date of death and for the five years preceding death, and statement of the net earnings for the same five years. Good will must be accounted for. In general, the same information should be furnished and the same methods followed as in valuing close corporations.

In listing automobiles give make, model, year, and condition as of date of decedent's death.

In describing an annuity, the name and address of the

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

grantor of the annuity should be given, or if payable out of a trust or other fund, such a description as will fully identify it. If payable for a term of years, the duration of the term and the date on which it began should be given, and if payable for the life of a person other than the decedent, the date of birth of such person should be stated.

Judgments should be described by giving the title of the cause and the name of the court in which rendered, date of judgment, name and address of judgment debtor, amount of judgment, rate of interest to which subject, whether any payments have been made thereon, and if so, when and in what amounts.

For further instructions, see articles 12, 13 (4), and 13 (7) to 13 (10), inclusive, of Regulations No. 80.

Did the decedent, at the time of his death, own any interest in a copartnership or unincorporated business? (Answer "Yes" or "No.")—Yes.

Did the decedent, at the time of his death, own any miscellaneous property not returnable under any other schedule? (Answer "Yes" or "No.")—No.

Item No.	Description	Fair market value at date of death	Interest and other income accrued to date of death
		$	$
	Decedent and her surviving husband were in the business of leasing rotary jars for oil wells, which business had no tangible assets save a few old jars of little or no value.		
	Totals	$	$
	Grand Total (also enter under the Recapitulation, Schedule L)		$00

(If more space is needed, insert additional sheets of same size)

Estate of Myrtle B. Kammerdiner

Date of death—April 4, 1935.

D-2

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

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DEDUCTIONS

Schedule H

Funeral and Administration Expenses

Instructions

Funeral expenses and administration expenses should be itemized, giving names and addresses of persons to whom payable, and exact nature of the particular expense. Preserve all vouchers and receipts for inspection by an internal revenue agent.

No deduction may be taken upon the basis of a vague or uncertain estimate.

Executors' or administrators' commission should be entered in the amount actually paid, or which it is reasonably expected will be paid, not to exceed the amount allowable by the laws of the jurisdiction wherein the estate is administered, and not in excess of the amount usually allowed in cases similar to that of this estate. Where the commission has not been awarded by the court, deduction on final audit is discretionary with the Commissioner, subject to future adjustment.

Attorney's fee should be deducted in the amount paid, or to be paid. If the fee has not been paid at the time of the final audit, deduction is discretionary with the Commissioner, subject to future adjustment.

Estate, legacy, succession, and inheritance taxes, and taxes on income received after death, are not deductible. Credit to a limited extent may, under Schedule P, Computation of Tax, be claimed for estate, legacy, succession, inheritance, and gift taxes.

For further instructions, see articles 29 to 35, inclusive, and 52, Regulations No. 80.

Item No.		Amount of Item	Totals
	Funeral expenses:	$	
	Total Funeral Expenses (also enter under Schedule L)....		$ 787.73√

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Item No.		Amount of Item	Totals
	Executors' commissions, estimated, paid (also enter under Schedule L) (Strike out words not applicable)		$
	Attorneys' fees, estimated, paid (also enter under Schedule L).... (Strike out words not applicable)		$
	Miscellaneous administration expenses: Taxes a lien at death.....	2,698.99	
	Total Miscellaneous Administration Expenses (also enter under Schedule L)		$ 2,698.99

(If more space is needed, insert additional sheets of same size)

Estate of Myrtle B. Kammerdiner

Date of death—April 4, 1935

H

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SCHEDULE L

Recapitulation

Schedule	Gross Estate	Value
A	Real estate$	
B	Stocks and bonds (grand total of all pages of this schedule).....	
C	Mortgages, notes, cash, and insurance.....	
D–1	Jointly owned property.....	142,904.64√
D–2	Other miscellaneous property.....	
E	Transfers	
F	Powers of appointment	
G–1	Property identified as previously taxed.....	
	Total Gross Estate	$142,904.64√

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule	Deductions	Amount
H	Funeral expenses $	787.73√
	Administration expenses:	
	Executors' commissions	
	Attorneys' fees	
	Miscellaneous Taxes a lien at death.....	2,698.99√
I	Debts of decedent	
J	Unpaid mortgages	
	Net losses during administration	
	Support of dependents	
K	Charitable, public, and similar gifts and bequests	
	Total Deductions, except specific exemption and property previously taxed..... $	3,486.72√

SCHEDULE M

Net Estate for Tax Imposed by Revenue Act of 1926—Resident Decedent

1.	Total gross estate		$142,904.64√
2.	Total deductions, except specific exemption and property previously taxed $	3,486.72	
3.	Specific exemption	100,000.00	
4.	Total deductions, except property previously taxed (Item 2 plus Item 3)..... $	103,486.72√	
5.	Deduction for property previously taxed without proportionate reduction (Schedule G-2, Item C) $.....		
6.	Proportionate reduction (proportion of Item 4 that Item 5 bears to Item 1..... $.....		

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

7. Net deduction for property previously taxed (Item 5 minus Item 6)	$	
8. Total deductions (Item 4 plus Item 7)		$103,486.72√
9. Net estate (Item 1 minus Item 8)		$ 39,417.92√

Estate of Myrtle B. Kammerdiner
Date of death—April 4, 1935
L M

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SCHEDULE N

Net Estate for Additional Tax Imposed by Revenue Act of 1932 —Resident Decedent

1. Total gross estate			$142,904.64√
2. Total deductions, except specific exemption and property previously taxed	$	3,486.72√	
3. Specific exemption		50,000.00	
4. Total deductions, except property previously taxed (Item 2 plus Item 3).....	$	53,486.72√	
5. Deduction for property previously taxed without proportionate reduction (Schedule G-2, Item C)$.....			
6. Proportionate reduction (proportion of Item 4 that Item 5 bears to Item 1).....$.....			
7. Net deduction for property previously taxed (Item 5 minus Item 6)	$		53,486.72√

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

8. Total deductions (Item 4 plus Item 7)		——————√
9. Net estate (Item 1 minus Item 8)		$ 89,417.92√

Estate of Myrtle B. Kammerdiner
Date of death—April 4, 1935
N O

COMPUTATION OF TAX

1. Gross tax imposed by 1926 act	$ 394.18√	
2. Credit for gift tax imposed by 1924 and/or 1932 act		
3. Gross tax less credit for gift tax (1 minus 2)	$	
4. Credit for estate, inheritance, legacy, or succession tax	315.34√	
5. Net tax imposed by 1926 act (3 minus 4)		$ 78.84√
6. Total gross taxes imposed by 1926 and 1932 acts	RWC 4,647.61√	
(Tentative Tax, 1932 Act)	$ ~~4,259.25~~	
7. Gross tax imposed by 1926 act	394.18√	
8. Additional tax (6 minus 7)	$ ~~3,865.07~~ RWC 4,253.43	
9. Credit for gift tax imposed by 1932 act		
		4,253.43√RWC
10. Net additional tax (8 minus 9)		~~3,865.07~~
11. Total net tax (5 plus 10)		~~$3,943.91~~ 4,332.27√RWC

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Interest 4/4/36 to 8/17/36	8.60
Paid	
	4,340.87

Estate of Myrtle B. Kammerdiner
Date of death—April 4, 1935
P

Jurat for Beneficiaries, Custodians, and Trustees

I-We, James A. Kammerdiner, surviving joint tenant, the undersigned beneficiar.....Custodian-Trustee, do hereby solemnly swear-affirm that I have carefully read the instructions printed on this form; that hereon is listed all of the property, tangible or intangible, contained in the gross estate of the decedent which has come into my possession and control; that to the best of my knowledge, information, and belief, the value shown for each item of property listed hereon was the fair market value of the same at the time of the decedent's death; and that the debts, expenses, and charges entered hereon as deductions from the gross estate are correct and legally allowable.

(Name) JAMES A. KAMMERDINER,
(Address) 237 South Highland, Los Angeles, California.

Subscribed and sworn to before me, at Los Angeles, California, this 14th day of March, 1936.

VERA M. STOKES,
Notary Public.

[Endorsed]: Filed Dec. 29, 1941.

(Testimony of James A. Kammerdiner.)

By Mr. Mitchell:

Q. I hand you, Mr. Kammerdiner, Defendant's Exhibit 12, a certified copy of the Estate Tax Return that was [47] filed by you in this case, and call your attention to page A-9. Turn to A-9 at the bottom of the page. "O-9" it may be. I think it is "A-9." Yes.

Mr. Smith: What schedule is that?

Mr. Mitchell: That is under Schedule D-1, jointly owned property.

Q. When was that first piece of real estate acquired by you and Mrs. Kammerdiner?

Mr. Bloom: Objected to as incompetent, irrelevant and immaterial, forming no part of the issues in this case.

Mr. Mitchell: If your Honor please, I am attempting to establish the practice and conduct of the spouses from the time of their marriage down to the date of the wife's death in the purchase, the making of investments, with joint property, because of the bearing it would have on the rotary jar business and the assets of the rotary jar business which are involved in this case.

Mr. Bloom: We will stipulate that all the property was owned as Joint Tenancy, if that is what you are trying to prove.

Mr. Mitchell: No. I am trying to attempt to establish the source of the purchase price.

The Court: The objection is overruled. You may answer the question.

(Testimony of James A. Kammerdiner.)

Do you remember the question, Mr. Kammerdiner?

The Witness: I do not. [48]

By Mr. Mitchell:

Q. Do you see Item 1 there on Page A-9?

A. Item 1?

Q. Yes. A. Yes.

Q. The left-hand margin. Then this would be Item 2 and so on down the following pages.

Can you identify that first parcel of real estate there? A. I don't identify it.

Q. That was a Torrens Title, according to the last paragraph under Item 1.

A. What was that, please?

Q. It was registered under the Torrens Title. Do you understand what I mean?

A. No.

Q. The last paragraph reads: "This property has been registered under the Torrens Title and is covered by Certificate No. CC-27772, issued in the name of James A. Kammerdiner and Myrtle B. Kammerdiner, as Joint Tenants."

Does that refresh your recollection at all?

A. The only piece of property that I was interested in with the Torrens Title is down at Lawndale in the oil fields. That is the only one I know of.

Q. You valued this at $1,920.00, you notice, and half of it was included in the gross estate, half of that, $960.00. [49] A. Yes.

(Testimony of James A. Kammerdiner.)

Q. Does that refresh your recollection at all? When did you acquire that property in Lawndale?

A. I don't know. I believe that was along in '25.

Q. 1925? A. '25 or '26.

Q. That was purchased by yourself and your wife?

A. No; John Grant, Del Campbell, my wife and I.

Q. The four of you? A. Yes.

Q. Well, that is another piece of property.

A. Well, that is the only one I got.

Q. The interest of you and your wife was paid for with what money, Mr. Kammerdiner? What was the source of the money with which you paid for your interests?

A. Well, that came from the jar business at that time.

Q. I see. Some of the profits of the jar business?

A. Yes.

Q. Did you and Mrs. Kammerdiner own any property before you went into the jar business?

A. Yes, sir.

Q. Any real estate? A. Yes.

Q. How long before? About what year was it purchased? [50]

A. We purchased some in 1909, one year after we were married.

Q. Was that real estate? A. Yes.

Q. Where was that real estate located? And what kind of property was it?

(Testimony of James A. Kammerdiner.)

A. Two vacant lots on Manhattan Avenue.

Q. In what city? Los Angeles?

A. Los Angeles.

Q. Do you recall about how much was paid for it?

A. I think the total price was $1300.00 and we were to pay thirty-five to forty dollars a month on that. We have had them ever since.

Q. Where did this $1300.00 come from with which to make this purchase?

A. From my salary.

Q. From your salary? A. Yes.

Q. Did you own those two lots at the time of your wife's death? A. Yes.

Q. Was that taken in your joint names or do you know? A. No.

Q. It was in your name? Can you find the description there?

Mr. Smith: Was it in your name at the time Mrs. Kammer- [51] diner deceased? Was that property in your name?

The Witness: No, it was a Joint Tenancy.

By Mr. Mitchell:

Q. Oh. When was that change made?

A. At the same time that——

Q. (Interrupting): The agreement was signed at Mr. Ellis' office in 1928? A. Yes.

Q. And can you identify those two lots amongst those parcels of property?

A. I will be darned if I know how to find them.

(Testimony of James A. Kammerdiner.)

Q. I call your attention to Item 11 on page A-11, Item 11 in the middle of the page, Lots 20 and 21 of the Vendome Park Tract, Los Angeles.

A. That is the two lots.

Q. Those are the two lots? A. Yes.

Mr. Mitchell: I call your attention to the fact that that was joint tenancy property, and half of it, the wife's half, was included in the gross estate by the plaintiff himself.

The Court: All right.

By Mr. Mitchell:

Q. Was there any other property purchased by you and your wife prior to the rotary jar business?

A. Yes. We owned a lot on the corner of St. Andrews [52] and Clinton Street.

Q. St. Andrews? A. And Clinton.

Q. And Clinton Street? A. Yes.

Q. In Los Angeles? A. Yes.

Q. Was that owned until the time of Mrs. Kammerdiner's death? A. Yes.

Q. What did you pay, if you remember, approximately, for that property?

A. We paid $1000.00 for that.

Q. Did the funds come out of the joint account with which that was paid?

A. Yes—no, there was no joint account at that time.

Q. What year was that, Mr. Kammerdiner?

A. That was—I think it was the last part of 1909.

(Testimony of James A. Kammerdiner.)

Q. Oh, I see. You hadn't at that time started the joint account?

A. We had no money to start an account with.

Q. When was the first joint account started?

A. When I went to work for the Associated Oil Company at Goya.

Q. That was about what year, Mr. Kammerdiner? A. That was in 1909. [53]

Q. Well, it was shortly after that you had some money that could be saved; is that the idea?

A. Yes.

Q. And that account was kept in the one you referred to before, the one in Los Angeles, and only your emergency account kept in Fullerton?

A. Yes.

Q. Can you find that piece of property on Manhattan among those parcels?

By the way, before you look for that, Mr. Kammerdiner, did Mrs. Kammerdiner have an account in her name at that time?

A. I think she did.

Q. A bank account?

A. I think she did.

I couldn't find that.

Q. You can't find that, but it was owned at the time of death? A. How?

Q. It was owned at the time of your wife's death? A. Yes.

Q. Did you have a new deed made out in that case transferring it to the joint account, or was

(Testimony of James A. Kammerdiner.)

it originally taken in both of your names, that Manhattan property?

A. That was bought in my name to start with.

Q. To start with? [54] A. Yes.

Q. When you say it was changed, do you mean that agreement changed it, that agreement of 1928 that was made in Mr. Ellis' office, or was something done besides that to change it?

A. No, sir. There wasn't any change from the way things were before.

Q. I don't understand. What was the answer?

A. There was no change that I know of.

Q. There was nothing done about the deeds?

A. The deeds were changed, yes, because Mr. Ellis, I believe, transferred them to a brother-in-law or sister-in-law and then back to us, so there had to be a change in there.

Q. That was done in 1928. Was that done in respect to all parcels that you owned that stood in your name, or in her name prior to 1928; all real estate, I mean? A. Yes.

Q. That was done by Mr. Ellis in 1928 about the time that the contract was signed?

A. Yes.

Q. Did any property stand in your wife's name at that time, any real estate?

A. I do not believe so, no, sir.

Q. Did you purchase any other properties after 1909 and before 1923? [55] A. Yes, sir.

Q. What was the next property purchased?

(Testimony of James A. Kammerdiner.)

A. I bought a quarter interest in a 15½ acre orange grove in Orange County.

Q. Was that taken in your name, too?

A. Yes.

Q. What, if anything, did Mrs. Kammerdiner have to do with the negotiating of those purchases with you, or did you handle them all alone without any assistance from her? A. No.

Q. What is that?

A. I would consult with her on anything of that kind.

Q. You always consulted her?

A. Always consulted her.

Q. Before the purchase was made?

A. How?

Q. Before the purchase was made?

A. Yes.

Q. What was this third piece of property that was purchased, again, please?

A. It is about—I bought a fourth interest in a 15½ acre orange grove.

Q. What year was that, Mr. Kammerdiner?

A. Well, I think was about '10 or '11.

Q. 1910 or '11? A. Yes. [56]

Q. About what was paid for that interest?

A. I think I paid $5600.00 for it.

Q. And the money used to purchase it came from where?

A. From practically—all the money that it took to buy that came from some oil stock I bought in Maricopa practically.

(Testimony of James A. Kammerdiner.)

Q. Before?

A. They paid monthly, and I turned the money right over and paid for the ranch.

Q. When was this oil stock, the Maricopa oil stock, purchased?

A. I don't know. It seems shortly after I went to Brea that I borrowed the money to pay for that.

Q. How did you repay that loan? Out of the profits from the boarding house and the drilling at Brea? A. Yes, sir.

Q. Was that money taken from the joint account or was it paid as it came in?

A. Well, it was taken from our earnings on the lease out there——

Q. (Interrupting): That is, the earnings of yours and your wife? A. Yes, sir.

Q. Partly from the boarding house and partly from your salary? A. Yes. [57]

Mr. Mitchell: Counsel stipulates that that is Item 18 in the Estate Tax Return; is that correct?

Mr. Bloom: But that adds up to 15 acres. Is that the 15 acre orange ranch that you were speaking of as having been purchased?

The Witness: No; that is undivided, that 15 acres that I have a quarter interest in.

By Mr. Mitchell:

Q. This Item 18 is an undivided one-half interest in and to the following—and it adds up to 15. [58]

(Testimony of James A. Kammerdiner.)

A. I now own half of it, but at the time he asked the question I only owned a quarter of it.

Mr. Bloom: That is the piece of property you were referring to?

The Witness: Yes.

By Mr. Mitchell:

Q. Now, after you purchased this quarter interest, when did you purchase the additional quarter interest, approximately?

A. I think that was around '30, 1930.

Q. That was paid for with profits from the rotary jar business?

A. I loaned some money to a man that owned the other quarter.

Q. What money did you loan? Some of the funds that were profits of the rotary jar business?

A. Yes, I imagine so.

Mr. Bloom: What was that answer?

The Witness: Yes. [59]

Q. Now, were there some other properties purchased prior to 1922 besides these three or four that you have already mentioned?

A. Yes. I think we bought a house. I think it was before '23, on Clinton Street.

Q. In Los Angeles? A. Los Angeles.

Q. Do you recall about the time?

Q. I mean prior to 1923.

A. I don't mean 1930—1910.

Q. Oh, 1910? A. Yes.

Q. How was that paid for? With what funds?

A. My work.

(Testimony of James A. Kammerdiner.)

Q. And it didn't include any of your wife's funds, [60] or did it come from a joint account?

A. I think it came from the joint account. We just bought it on small payments.

Q. When you say, "We bought it," just what do you mean, Mr. Kammerdiner? When you say "We"? Do you refer to yourself and your wife?

A. Yes.

Q. What did she have to do with it?

A. Well, she was really the one that suggested that we buy it.

Q. Well, did she furnish some of the money to pay for it?

A. It came from our bank account, yes, sir.

Q. Was it your bank account or was it the joint bank account?

A. Well, I wouldn't right out say for that.

Q. You don't recall?

A. I wouldn't be able to say that.

Q. How much was paid for that piece of property?

A. I think we paid $3500.00 for that.

Q. By the way, did you have that property at the time of your wife's death? A. Yes.

Q. Was that also transferred by Mr. Ellis?

A. Yes.

Q. Was it taken originally in your name? [61]

A. Yes.

Q. And then it was in 1928 transferred to Joint Tenancy? A. Yes.

(Testimony of James A. Kammerdiner.)

Q. Was that an improved lot with a house on it?

A. Yes.

Q. Where was it?

A. It is 648 Clinton, close to Western Avenue.

Mr. Mitchell: Counsel will stipulate that this piece of property to which the witness has just referred is included under Schedule D-1, jointly owned property, and half of the value was returned by the taxpayer in the tax return as a part of the gross estate.

Mr. Smith: The return is in evidence, and I think that speaks for itself. We won't stipulate to the last part.

The Court: Merely identify it if it is in there.

Mr. Bloom: We will stipulate in this way, if your Honor please, that all real estate, outside of the rotary jar business, was returned in the jointly owned property schedule D-1. [62]

Q. Do you recall any other properties, either real estate or stocks or bonds or mortgages, that were purchased before 1923?

A. Yes. I recall one lot down at Culver City. We bought that when we were out at Brea.

Q. That was about what year? You were at Brea for six years, from 1909 to 1915, I believe.

A. Yes. That would be in 1910.

Q. Also 1910? A. Yes.

Q. And your testimony regarding the purchase price of that would be the same as regarding the other lots, that is the source of the money that was used to pay for it?

(Testimony of James A. Kammerdiner.)

A. Yes, I would say that, yes.

Q. Did it come out of the joint account?

A. Yes.

Q. Do you recall any other properties that you bought [63] between 1910 and 1923?

A. No, I do not.

Q. There are a number of other parcels of real estate, quite a few, and I will ask you whether the balance of those pieces of real estate that are contained in Schedule D-1 of your Estate Tax Return, were they all purchased after 1923, between 1923 and the date of your wife's death?

A. Well, I should say they were, yes.

Q. They would have to be if you have testified to everything that was purchased before 1923.

A. Yes.

Q. Were they purchased with proceeds of the rotary jar business, profits of the rotary jar business? A. Yes.

Q. Was that the only source of income of yourself and wife during that period? A. No, sir.

Q. What was the other source of income?

A. Well, we had orange groves.

Q. Oh, rents and profits from real estate?

A. Yes.

Q. You also owned some stocks and bonds that paid dividends? A. Yes.

Q. Those were also purchased after 1923, were they? A. Yes. [64]

Q. And they were purchased with profits from the rotary jar business, were they? A. Yes.

(Testimony of James A. Kammerdiner.)

Q. And American Express Travel checks and Postal Savings certificates, Items 39 and 40 under Schedule D-1 of the Estate Tax Return, were those purchased also with profits from the rotary jar business, or income from some of the property you have described? A. Yes.

Q. Now, Mr. Kammerdiner, you have testified about protective patents that were acquired after the basic patent was acquired? A. Yes. [65]

(Thereupon, at 12:15 o'clock P. M. a recess was taken until 1:30 o'clock P. M. of the same date.) [66]

Q. I hand you, Mr. Kammerdiner, a certified copy of the Partnership Return of Income for the calendar year 1926, filed by Mr. and Mrs. J. Kammerdiner, doing business as J. Kammerdiner, which purports to be verified by you.

I presume that is your signature, "J. Kammerdiner"? A. Yes.

Q. I call your attention to the schedule attached in which the total income of the partnership appears and the deductions are itemized, and particularly this item "House, 4800 Clinton Street, Rents Received, $405.00; Repairs and Taxes, $273.00; Depreciation, $140.00."

Is that the Clinton Street property you testified to this morning? A. Yes.

Q. Then also rental on 2½ acres on Main Street, [67] $132.50; taxes and repairs, $94.21; net income, $38.25."

(Testimony of James A. Kammerdiner.)

Is that property you testified to also this morning, or was that acquired later?

A. No, that is another 2½ acres on Main Street.

Q. Then here is a 25-acre ranch, for interest and taxes, $172.00. That is a deduction. Did you testify to that parcel this morning, of real estate? Is that one of them?

A. No, I don't believe we did find that one.

Q. When was that acquired, if you remember? Sometime prior to 1926, the taxable year here, apparently.

A. I believe so. O. A. Johnson and William Kammerer and I own that.

Q. Then you had a fourth interest?

A. I have a third interest.

Q. Then the Barnes City, one-half acre, taxes $15.66. Did you testify to that?

A. What is that one?

Q. Barnes City, half an acre.

A. We called it Culver City this morning.

Q. Tax on Athens lot 186. Did you testify to that? A. No.

Q. When was that acquired?

A. Well, that was acquired during that oil boom.

Q. Was it acquired before you patented the rotary jar? [68] A. No.

Q. Was it afterwards? A. Yes.

Q. Then the lots on Manhattan Street; you did testify to that? A. Yes.

Q. Taxes, $360.26. Then the St. Andrews lot and house?

(Testimony of James A. Kammerdiner.)

A. Yes. That is the one on the corner of Clinton and St. Andrews.

Q. You report the income and then deduct the taxes? A. No. We have two places.

Q. Was that acquired before '23, the St. Andrews lot and house?

A. Well, I believe it was acquired afterwards. It was close to there, though.

Q. Mr. Kammerdiner, I call your attention to the bottom of the schedule: "As explained in last year's report, both Mrs. Kammerdiner and Mr. Kammerdiner work in the business and agreement has been made that Mrs. Kammerdiner receives vested interest in one-half of property and income, making hers separate property."

Now, that was true, wasn't it? You swore to that at that time.

Mr. Bloom: I object to that. The instrument speaks for itself. [69]

Mr. Mitchell: I am asking him whether it is true, whether he made a mistake then when he swore to this. I don't know.

The Witness: I say I didn't make a mistake because everything we had was——

By Mr. Mitchell:

Q. 50-50?

A. ——Joint Tenancy, right of survivorship. It didn't make any difference where it come from or how it worked, it was the right of survivorship.

Q. When did that start?

(Testimony of James A. Kammerdiner.)

A. The day we got married.

Q. So that this partnership return, your partnership agreement or Joint Tenancy agreement, whatever you call it, was entered into at the time you got married?

A. We didn't think so very much of it until the jar business came along.

The Court: Then you had something to divide.

The Witness: We had something to divide. I have six sisters and a mother and a father living, and my wife never knew or saw or heard of them at all, and in that case, why, she was afraid they might come out here and take what little she had left if I would pass on, so when we got a chance to split the income I thought that was a very good idea.

By Mr. Mitchell:

Q. Wasn't that agreement made, though, in Mr. Ellis' [70] office in 1928?

A. No. We made that agreement at the start of the jar business, '23.

Q. That it was to be 50-50 and in case one died the other would get all? A. Yes.

Q. Is that the idea? A. Yes.

Q. And there was no difference between that agreement and the one you made when you were married?

A. Well, I couldn't say there was any difference with the agreement. I couldn't work out any difference.

Q. Let's get it straight. You had some profits

(Testimony of James A. Kammerdiner.)

to divide down on the Brea lease, didn't you? Mrs. Kammerdiner, I believe you testified at the trial before the Board of Tax Appeals, saved about $3,000.00, did she not?

A. Yes, or possibly more than that. She run that boarding house for about six years and I think the profit was a little more than that.

Q. A little more than $3,000.00? A. Yes.

Q. And you had some savings from your salary?

A. All my savings.

Q. And they all went into one joint account?

A. Yes.

Q. And you and your wife considered that you owned [71] them 50-50, didn't you?

A. Well, that is the only thing we figured out, but it was lined up after we got the jar business that we——

Q. (Interrupting) It was made more definite, at least, when you got the jar business?

A. No, it made it more alluring for somebody to attack us or sue us.

Q. I was thinking of the agreement, not of the dangers.

A. Well, there was danger. My wife thought some of my sisters or my father or mother would come out here and where you have something that is worth something like that, there is always somebody looking for it.

Q. Of course. And that agreement included not only the rotary jar business but all the other prop-

(Testimony of James A. Kammerdiner.)

erty, whether it stood in your name or Mrs. Kammerdiner's name?

A. That is the way we stood on it.

Q. But it was not until 1928 that you had this so-called Joint Tenancy agreement? A. Yes.

Q. Drawn up?

A. They told us that we couldn't—they wouldn't allow us to split the tax.

Q. For income tax purposes?

A. Yes, unless it was put into writing. That was the reason that came up then.

Q. You say that that was the agreement, really from [72] the time you were married.

Just what do you mean by that, Mr. Kammerdiner? Do you mean there was some understanding between you and your wife at that time if you ever owned any property?

A. I think any couple goes through that. I think that starts any time a couple gets married.

Q. Did you contemplate that she would have just as much management of the property acquired as you did? Have just as much say about what was going to be done?

A. On anything of any importance it was always taken up with her.

Q. Or she took it up with you?

A. Or she took it up with me in everything.

Q. You felt that you each had an equal right to have a say in what should be done with your investments and property; is that correct?

(Testimony of James A. Kammerdiner.)

A. Yes, in any of any great importance.

Q. Now, that related to the patents as well as real estate, that agreement, all properties, did it not?

A. There was no way of transferring that to her.

Q. May I ask you this, Mr. Kammerdiner: The Board held so far as your taxes were concerned, income tax in '25, '26, and '27, that during those three years a partnership existed between you and Mrs. Kammerdiner, and ruled that you could each report half of that income? A. Yes. [73]

Mr. Bloom: If that is a statement, we will object to the statement.

Mr. Mitchell: It is preliminary.

Mr. Smith: It is a very important question in this case.

Mr. Mitchell: It is a matter of public knowledge that the Board so held.

Mr. Bloom: The decision of the Board speaks for itself as to what it held.

The Court: Go ahead.

Mr. Smith: We don't know whether it had the same facts as we have before us now.

The Court: Of course I can take judicial notice of the attitude of the Internal Revenue toward community property, which has continued to the present time. People have resorted to all sorts of means to give effect to the Community Property Law of California. The Internal Revenue isn't convinced yet that anybody is right in any income

(Testimony of James A. Kammerdiner.)

tax community property case, including myself. They never concede anything until they have a decision of the United States Supreme Court. It doesn't make any difference what the Board of Tax Appeals decided. We can't review their decisions, but they are not binding on us as precedents.

Mr. Mitchell: I don't think that question was exactly involved, but only incidentally.

The Court: Then I will sustain the objection. You [74] can offer their decision in evidence.

Mr. Mitchell: Very well.

The Court: Evidently he tried on a partnership theory in order to get what he was entitled to under the law of California and what the Bureau of Internal Revenue has sought to refuse to everybody for years and that is full effect of community property rights.

Mr. Mitchell: I think he succeeded in that case.

The Court: Glory be to him. Even if he had to call his wife a partnership, glory be to him. I am in favor of anybody who can enforce the right of community property against the Internal Revenue Bureau because they have taken an arbitrary attitude, and it is recognized by all the Courts that they have.

By Mr. Mitchell:

Q. Mr. Kammerdiner, the purpose of the partnership was to promote and make money out of the products and the rights under those patents; isn't that true?

(Testimony of James A. Kammerdiner.)

Mr. Bloom: Objected to as assuming a fact not in evidence.

Mr. Mitchell: We will have to get him to change his testimony, then. [75]

By Mr. Mitchell:

Q. The title of the return is "Partner——"

The Court (Interrupting): You are arguing with the witness. It doesn't make any difference. You can argue later on. There is no use for you to examine him. You have examined him enough. You can argue with me whether he claimed partnership from what he said there without arguing with him. He is a successful businessman, but a man with little schooling and you might get him tangled up, not that you try to, into a statement. This is merely evidence to support your theory that there is a contradiction between his attitude now and then. The statement he made there is admissible as argument, but you are arguing with the witness. [76]

The Court: Furthermore, you can call him back as an adverse witness under the rule and examine him as to these things, but let there be some limit ultimately. There is no use to argue with the witness. He would have signed almost anything. I doubt, with the kind of English he speaks, if he understands half of the words the lawyer uses in those documents unless they were explained to him in words of one syllable. He is a man of little schooling. He is an intelligent man but as far as formal schooling, he has had very little. Why con-

(Testimony of James A. Kammerdiner.)

front him with statements his lawyer made, except to have him admit them, which he already has. The object of any marriage is to get along in the world. They start with nothing and they hope to end up as millionaires and unfortunately some end up in the poor house.

By Mr. Mitchell:

Q. In this agreement of 1923, did you and Mrs. Kammerdiner agree to share profits equally and to share losses equally? [77] A. Yes.

Q. And was the purpose of the agreement to use the rights under the rotary jar patent and try to make money? A. Yes, sir.

Q. And you proceeded, then, did you not, to manufacture the rotary jar itself and then rent it?

A. Yes.

Q. To the oil companies who were drilling oil wells? A. Yes.

Q. And that is what you did? A. Yes.

Q. It was out of those patented jars that you made your money? A. Yes.

The Court: Let me ask you this question: You don't mean to say when you said you agreed to share profits or losses, you don't mean to say that you treated her the way you would a partner and every time you had to pay a bill you would say, "Give me half of this."

The Witness: No, sir.

The Court: And you didn't go and say, "Now, I have paid more than my share, now you pay your share"?

(Testimony of James A. Kammerdiner.)

The Witness: No, sir.

The Court: You don't mean anything like that?

The Witness: No.

The Court: What you do mean is this: You made the [78] venture for better or worse, and whatever you acquired, you paid for with money that you both owned?

The Witness: Yes.

The Court: You never drew the line between what was yours and what was hers, and if you lost money you would both go to the bankruptcy court?

The Witness: Yes.

The Court: That is what you meant?

The Witness: Yes.

The Court: You didn't make any agreement by saying, "I will divide the profits and losses," the way you would if you entered into partnership with John Smith?

The Witness: No, sir.

The Court: All right. Go ahead.

If you and your wife disagreed, you didn't expect to go to court to dissolve the partnership, you expected it would be dissolved by divorce or death?

The Witness: Yes.

The Court: That is just to show you the absurdity of trying to take the definition of a partnership and put it in the hands of the witness.

Mr. Mitchell: Counsel will stipulate that the basic patent was issued on October 2, 1923, in the name of James A. Kammerdiner, and was re-issued

(Testimony of James A. Kammerdiner.)
on February 12th, 1924 in the name of James A. Kammerdiner; subsequent to the issuance of the basic patent, there were eight additional [79] patents issued in the name of James A. Kammerdiner on August 4, 1925, one on March 10, 1925, one on February 22, 1927, one on November 22—another on November 22, 1927, one on June 5, 1928, one on May 31, 1932, one on February 18, 1930, one on January 29, 1935; then also that a patent was issued in the name of William W. Frye, patentee, on August 27th, 1929, but the file in that case is entitled "Kammerdiner," presumably J. A. Kammerdiner; another patent was issued under the name of patentee Samuel P. Powers on October 29, 1929, and the file in that case is entitled "J. A. Kammerdiner"; another patent was issued in the name of patentee S. W. Skeyson, January 19, 1932, and the file in that case is entitled "J. A. Kammerdiner."

Counsel will stipulate to the rest of these. There are four other patents which show that Kammerdiner is assignee, all issued before the date of the death of the decedent in this case; and sixty other patents owned by Mr. Kammerdiner—sixty other patents issued in the name of other persons prior to the date of death of the decedent and at sometime transferred in the name of J. A. Kammerdiner, the time we will have to determine from Mr. Kammerdiner. If any were transferred after death, we are not interested.

(Testimony of James A. Kammerdiner.)

Mr. Bloom: So stipulated. [80]

Mr. Mitchell: Counsel will stipulate that they were all acquired between 1924 and the date of death of the decedent. He will not stipulate whether they were acquired by a firm, or by Tenants in Common or by Joint Tenants, but in the name of J. A. Kammerdiner.

Mr. Smith: Yes.

By Mr. Mitchell:

Q. What funds were used to purchase these other patents that were issued prior to your wife's death and subsequent to the basis patent?

A. May I have a word first before you question me on that?

Most all of those patents, most all of them you called off I have no interest in. There must have been a mistake made in making up that list.

Mr. Smith: Then if we have made a mistake we had better withdraw our stipulation. I took counsel's word for it. I knew nothing about it at all and counsel took the statement of somebody else. [81]

Mr. Mitchell: The Revenue Agent took the word of Mr. Bloom or someone in your office.

Mr. Smith: No, we just gave him the file. We gave him the patent file.

The Court: Why don't you have him take a look at them.

(Testimony of James A. Kammerdiner.)

By Mr. Mitchell:

Q. Mr. Kammerdiner, are you able to identify these?

A. Some of them, but there are some there that you didn't call that I own.

Q. That you owned before your wife's death?

A. Yes.

Mr. Smith: We didn't call them all.

The Witness: Oh.

Mr. Smith: I suggest that the witness look through the list and find what patents are noted in there that he hasn't any interest in.

The Witness: I have possibly all together 28 or 30 sets of patents.

By Mr. Mitchell:

Q. Were they all acquired before your wife's death or since?

A. I acquired one since.

Q. The balance were acquired before she died? [82]

A. Yes, sir—no, I can't tell you.

Mr. Mitchell: Then maybe we had better take the witness' statement in lieu of the stipulation; and I will ask you then, subsequent to the acquisition of the basic patent, what was the source of the funds with which the other 18 or 19 were purchased?

The Witness: I would say from the profits made on the basic patent.

(Testimony of James A. Kammerdiner.)

By Mr. Mitchell:

Q. The profits made in the rotary jar business?

A. Yes.

Q. How many patents did you purchase from third persons?

A. Oh, I thought you meant a set of jars. Well, there is very much difference in prices on them. Some of them cost a thousand dollars and one of them cost thirty-four thousand dollars.

Q. That is the Knox patent?

A. How? [83]

Q. Was that the Knox patent?

A. No. That was the Pyles patent.

Q. When was that purchased?

A. Along in '32, I believe. No, it was earlier than that.

Q. How about the Knox patent? When was that purchased?

A. I don't know anything about the Knox patent.

Q. The Pyles patent was the most expensive of all so far as the payment was concerned?

A. Yes, but some of the others were very expensive.

Q. Did the money used to purchase that patent come from the profits of the rotary jar business?

A. Yes.

Q. And out of the joint bank account of yourself and wife? A. Yes.

Q. I show you a schedule attached to your 1938

(Testimony of James A. Kammerdiner.)

income tax return, Mr. Kammerdiner, which might refresh your memory on the patents that were purchased. "Amortization of Patents" is the title of the column, and the first one says, "Patent, 1928, 12½ years." That means, I presume, 12½ years to run? A. I believe so.

Q. And the amount of depreciation would be $201.60? A. Yes.

Q. Being 1/12th, approximately, of the cost; is that correct? Does that refresh your memory on what was paid [84] for some of those patents acquired before your wife's death, acquired by assignment? A. Well——

Mr. Bloom (Interrupting): If it is only the cost you want, we will stipulate that whatever life is shown there times the yearly amortization is the price paid for the patent as shown on that return, if that is what you want.

Mr. Mitchell: That is sufficient. May I read the cost, then, and the date of acquisition?

The Court: All right.

Mr. Mitchell: 1928, 12½ years, cost $2,520.00; 1930, 15 years, cost $14,750.00; 1932, 16 years, cost $1,000.00; 1933, 14-2/7ths years, cost $5,500.00; 1934, 17 years, $24,303.40 was the cost; 1935, 17 years, $2,793.37 cost.

Q. Does that refresh your memory as to the identity of those patents that were purchased at those prices? A. Yes, to a great extent.

Q. What was the source of the funds with which

(Testimony of James A. Kammerdiner.)

they were purchased? Was it from the joint bank account of yours and your wife's or one of the joint bank accounts of yourself and wife?

A. Yes.

Q. And represented profits from the rotary jar business? A. Yes.

Q. In those joint bank accounts that were carried [85] between 1923 and 1935, the date of your wife's death, your wife had the right to draw upon those accounts, draw funds from them without her consulting you, did she not? A. Yes.

Q. And she wasn't limited in any way, shape or form in that respect, was she? A. No.

Q. The same is true of all joint accounts that you ever carried, is it not? A. Yes.

Q. Prior to 1923 as well? A. Yes.

Q. What was the Knox patent? Don't you recall the Knox patent?

A. I never even heard of it.

Mr. Mitchell: With the Court's permission, I desire to offer in evidence, out of order, to save time, the Certificate of Partnership Name.

The Court: That is what I was asking about, the fictitious name.

Mr. Mitchell: Will counsel verify that the notarized acknowledgment of the signature was taken before a Notary Public in the office of plaintiff's counsel?

Mr. Bloom: Yes.

Mr. Mitchell: Your answer is "Yes"?

Mr. Bloom: Yes. [86]

(Testimony of James A. Kammerdiner.)

The Court: Defendant's Exhibit 14.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 14.")

DEFENDANT'S EXHIBIT No. 14-A
(Erroneously Introduced as No. 14)

PARTNERSHIP NAME

Certificate Required by Section 2466,
California Civil Code

Notice Is Hereby Given that the undersigned, James A. Kammerdiner and Myrtle B. Kammerdiner, have formed a partnership and are transacting business as copartners in the City of Los Angeles, County of Los Angeles, State of California, under the name of "Kammerdiner Rotary Jar Company".

That the full names of all the members of said partnership and their respective places of residence are as follows:

James A. Kammerdiner, 237 South Highland Avenue, Los Angeles, California.

Myrtle B. Kammerdiner, 237 South Highland Avenue, Los Angeles, California.

JAMES A. KAMMERDINER
MYRTLE B. KAMMERDINER

(Legal Affidavit of Publication of above Partnership Name attached.)

Duly Verified.

[Endorsed]: Filed Dec. 29, 1941.

(Testimony of James A. Kammerdiner.)

By Mr. Mitchell:

Q. Was that filed?

The Court: What is the date of that?

Mr. Mitchell: 1931, long after the Joint Tenancy written agreement.

The Court: All right.

By Mr. Mitchell:

Q. You had never filed one of those before that time, had you, Mr. Kammerdiner?

A. No, sir.

Q. Until 1931? A. Yes.

The Court (Interrupting): Q. Were you advised to make such a certificate, Mr. Kammerdiner, you and Mrs. Kammerdiner?

A. No. I think Mrs. Kammerdiner was the one who stood [87] out on that. She was afraid of my relatives in the east and she figured that that would show that we were both together, if they came out here and pounced on us in any way, shape or manner.

Q. This is dated, Mr. Kammerdiner, 1931?

A. Yes.

Q. This certificate? A. Yes.

Q. And counsel has stipulated that it was acknowledged before a Notary Public employed in Mr. Smith's office? A. Yes.

Mr. Smith: Let me suggest that the witness have a chance to read it. Have you had a chance to read it? Do you know what it is?

(Testimony of James A. Kammerdiner.)

Mr. Mitchell: Defendant's Exhibit 14. You might look at it. Read this part up here, the body of it.

Was that the one you were referring to?

A. Yes.

Q. That is what Mrs. Kammerdiner insisted upon? A. Yes.

Q. She wanted it entitled "Partnership Name"?

A. Kammerdiner Rotary Jar Company.

Q. Did she want it called a partnership?

A. I wouldn't say as to that.

Q. You certify here that you have formed a partner- [88] ship and are transacting business as copartners. What did you mean by that "formed a partnership"?

A. Well, I think any married couple that are married and married right have got a partnership right off the bat.

Q. You merely meant by "partnership" that you were man and wife?

A. Well, we were doing a good business.

Q. You were in business together, were you not?

A. Yes.

Q. That is what you meant, wasn't it, that you were in business together? She was not a mere housewife, was she? She didn't stay home and do nothing in your business?

A. No. She done her work in my house, though, or in our house. We had an office in the house and it took about all of her time to keep up with the bookkeeping.

(Testimony of James A. Kammerdiner.)

Q. That was quite a task at that time?

A. Yes. We were doing quite a little bit of work.

Mr. Mitchell: I offer the petition to the Board of Tax Appeals by Mr. J. Kammerdiner versus the Commissioner, Docket No. 41643, dated November 6th, or rather verified November 21st, 1928, by J. Kammerdiner. It also contains the Government's answer to the petition in the Board case and a few other documents that are immaterial.

Mr. Bloom: Objected to as incompetent, irrelevant and immaterial. [89]

Mr. Bloom. I am not objecting on the ground of order. I am objecting on the ground it is incompetent, irrelevant and immaterial and tending neither to prove or disprove any of the issues in this case.

Mr. Bloom: Yes, your Honor. I have merely to add that the years for which the petition was filed were for years preceding the written document, which has been introduced in evidence. [90]

The Court: The Lewis property. The Lewis property, evidently of separate origin, had been transferred by an agreement of the parties, reduced to writing into a community estate. Now, in that case, as in this, we went way back for years to show what the relationship had been and in that case, as in this, it was shown what these people actually did to give effect, at a certain moment, to what had been going on between themselves without any agreement before. It works both ways in all these cases.

(Testimony of James A. Kammerdiner.)

So whatever weight is to be given to this is a question to be determined later on when you argue the effect, but when people [91] say, "Why, we owned everything in Joint Tenancy," then they have a right to show that during certain periods they claimed partnership, not in the sense in which he claims it now, that is, 50-50 interest during life and survivor take all, but the ordinary words of partnership such as are used in ordinary transactions between strangers. What effect to be given I will determine later on.

Mr. Bloom: My only objection goes to the fact that this is for income tax uses prior to the date of the written agreement. Now, whatever they may have had, even if we assume that they had a very formal partnership agreement written for the years '25, 1926 and 1927, and then they entered into the written agreement which we have introduced in evidence, and under which it is testified the parties owned the property at the time of Mrs. Kammerdiner's death, then whatever they said prior to that time would have no effect. [92]

The Court: We can argue the effect later on. The objection will be overruled and it may be received.

The Clerk: Exhibit 14.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 14.")

(Testimony of James A. Kammerdiner.)

DEFENDANT'S EXHIBIT No. 14-B
(Erroneously Introduced as No. 14.)

United States Board of Tax Appeals

Docket No. 41643

Mr. J. KAMMERDINER,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION

The above named petitioner hereby petitions for a re-determination of the deficiency set forth by the Commissioner of Internal Revenue, in his notice of deficiency reference (461M) IT:C:P:7, dated October 2nd 1928, Exhibit "A" attached, form 866, reference IT:C:P:7, and statement reference IT:AR:B-10 CEJ 60D, and as a basis of his proceeding alleges as follows:—

1. The petitioner is an individual, (member of partnership) with principal place of business and residence at 237 South Highland Avenue, Los Angeles, California.

2. The notice of deficiency in form of 60 day letter and statement and Agreement as to final determination, marked Exhibits "A" "C" and "B" respectively, were mailed to the petitioner on October 2nd 1928.

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 14-B—(Continued)

3. The taxes in controversy are Income Taxes for the calendar years 1925 and 1926, amounting to $10,190.26 as per Exhibit "A", $15,156.17 as per Exhibit "B", $10,190.26 as per Exhibit "C".

4. The determination of tax set forth in the above exhibits are based upon the following alleged errors—

Respondent contends that a partnership did not exist between petitioner and his wife and has denied protest agsinst his ruling that a partnership could not be allowed.

Petitioner has been taxed on the basis of both incomes of himself and wife being one, which increases his tax as per figures shown on Exhibits "A" and "B", both of which were sent petitioner at the same time, and both of which do not agree as to amount of deficiency.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:—

(a) Ever since petitioner started to work on his patent rotary jar, from which his big increase in income has been derived, his wife has acted as his partner, assisted him in his work, kept the books and accounts of the business taken care of all the correspondence and collection of accounts, and she has been consulted and conferred with by petitioner in practically

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 14-B—(Continued)

every detail of the business. It was understood then, as it has been understood for years prior, that petitioner and his wife were in partnership, and on the Income Tax Return for 1925, there appeared this notation, which was sworn to by petitioner "Both Mr. and Mrs. Kammerdiner work in the business and agreement has been made that Mrs. Kammerdiner receives vested interest in one half of the property and income, making hers separate property."

In support of this statement Exhibits "D" and "E" sworn statements of Mrs. J. Kammerdiner and Mr. A. C. Baimbridge, both having knowledge of the facts, are attached hereto.

Mrs. Kammerdiner did not receive a salary of any definite amount for work done by her in the business, neither did petitioner as both drew out of the business whatever they required and it was agreed between petitioner and his wife that the joint account which they always carried would be continued and that Mrs. Kammerdiner would be entitled to half of the profits of the business in return for the work she performed as office manager.

In support of the above claim that a partnership existed and that the fact that Mrs. Kammerdiner by acting as office manager and doing

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 14-B—(Continued)

part of the work was entitled to be considered a partner, petitioner refers the Board to the following cases which have a bearing upon the present proceedings:—

(b) L. S. Cobb v Commissioner. Docket No. 7136 December 9, 1927. Deficiencies for 1920-1921 re-determined.)

During the taxable years petitioners wife was a member of a partnership and her one sixth share of the partnership profits was not taxable to him. (Extract from opinion: Petitioner contends that his wife was a member of the valid partnership and owned a one sixth share of the capital and profits of the business. The Commissioner seizes upon certain provisions of the partnership agreement and insists that the petitioner's wife 'had no interest in or control over the assets of the taxpayer's capital investment in the firm, or the distributable net profits thereof; she in fact was not a partner in the firm." We find no support of this claim in the partnership agreement. The parties to the agreement were competent to enter into a valid partnership. The bona fides of the transaction is not questioned.

(c) F. C. Busche v Commissioner. Docket Nos. 9447, 10202, 10755 March 14, 1928. Deficiencies for 1920-1923 re-determined. The

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 14-B—(Continued)

case above was one where the earnings of the wife of the petitioner were separate property by oral agreement between husband and wife under sections 158, 159, and 160 of the Civil Code of California, and she filed a separate return of her income; held, that respondent erred in adding the wife's earnings to the income reported by petitioner.

The Commissioner in the case of present proceedings has denied that a partnership existed, and against this we have the statement of petitioner and his wife that an oral agreement had been made many years before the partnership income tax return in dispute was prepared. As an Oral agreement was adopted in the case of F. C. Busche v. Commissioner, petitioner prays that an Oral agreement between his wife and himself be accepted and partnership return be allowed to remain as presented.

(d) Elihu Clement Wilson v Commissioner, George B. Wilson v Commissioner, William W. Wilson v. Commissioner, Docket Nos. 8500, 8501, 8502. May 2, 1928. Deficiencies for 1919-1920 re-determined. Held, that the Wilson Family Partnership for the years 1919 and 1920 was composed of the three petitioners and their respective wives.

(e) Charles Brown v Commissioner, Docket Nos. 13932, 27779, 31427 Joseph Israel v Com-

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 14-B—(Continued)

missioner. Docket Nos. 27780 and 31428, October 12th 1928. Deficiencies for 1921-1923 re-determined. Where the two petitioners and their respective wives entered into a contract to carry on a mercantile business and the profits and losses were divided equally, the income derived therefrom by the wives was their separate property and was properly returned and tax paid by them, and it was error to include same in the income of petitioners on the theory that it was community property.

Under the provisions of Section 158 of the Civil Code of California, "a husband and wife may enter into a partnership in California, and if there is any agreement which shows that the intention of the parties is to create a vested interest in the partnership as her separate property, such intention will change the character of their property from community to separate property." This does not say that the agreement must be in writing and as there was an oral agreement between petitioner and his wife, and as your Honorable Board pointed out in the case of Brown v Commissioner as referred to in preceding paragraph marked (e) that in none of the cases of Cobb v Commissioner, F. C. Busche v Commissioner and Elihue Clement Wilson v Commissioner, mentioned in paragraphs (b) (c)

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 14-B—(Continued)

and (d) above, did it appear that the wife had contributed any capital from her separate estate, and in the Busche case alone did each appear to have rendered any services, petitioner prays that his case may be considered in the light of the decisions made in the cases referred to above, and that the partnership return submitted by petitioner and his wife be allowed to stand and the deficiencies charged against petitioner be cancelled.

J. KAMMERDINER
Petitioner.

State of California,
County of Orange—ss.

Mr. J. Kammerdiner, being duly sworn, says that he is the Petitioner above named; that he has read the foregoing petition, and is familiar with the statements contained therein, and that the facts stated are true, except as to those facts stated to be upon information and belief and those facts he believes to be true.

J. KAMMERDINER
Petitioner.

Subscribed and sworn to before me this 21st day of November, 1928.

[Seal] S. RAVENKAMF

Notary Public in and for County of Orange, State of California.

My Commission Expires Oct. 18, 1930.

(Testimony of James A. Kammerdiner.)
Defendant's Exhibit No. 14-B—(Continued)

Exhibit A

Treasury Department
Washington

Office of
Commissioner of Internal
Revenue

Address Reply to
Commissioner of Internal
Revenue and refer to

October 2, 1928

Mr. J. Kammerdiner
237 South Highland Ave.
Los Angeles, California

Sir:

In accordance with Section 274 of the Revenue Act of 1926 you are advised that the determination of your tax liability for the years 1925 and 1926 disclosed a deficiency of $10,190.26, as shown in the attached statement.

The section of the law above mentioned allows you to petition the United States Board of Tax Appeals within sixty days from the date of the mailing of this letter for a redetermination of your tax liability. However, if you acquiesce in this determination, you are requested to execute the enclosed Form 866 and forward both original and duplicate to the Com-

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 14-B—(Continued)

missioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7.

Respectfully,

D. H. BLAIR,

Commissioner.

By (Signed) C. B. ALLEN

Deputy Commissioner

Enclosures:

Statement

Form 866

Form 882

Form 7928

Exhibit B

Agreement as to Final Determination of Tax Liability

IT:C:P-7

This Agreement, made in duplicate under and in pursuance of Section 606 of the Revenue Act of 1928, by and between Mr. J. Kammerdiner, a taxpayer residing at, or having its principal office or place of business at 237 South Highland Avenue, Los Angeles, California and the Commissioner of Internal Revenue;

Whereas, there has been a determination of the tax liability of said taxpayer in respect of Federal income tax for the calendar years 1925 and 1926 in the principal sum of Fifteen Thousand One hundred Fifty Six Dollars and Seventeen Cents ($15,156.17); and

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 14-B—(Continued)

Whereas, said taxpayer hereby agrees to this determination and consents to the assessment and collection of any deficiency in tax included in the amount of the principal tax liability so determined, together with any penalty or interest applicable thereto as provided by law, and/or to accept any abatement, credit, or refund made in accordance with any interest due thereon as provided by law;

Now, This Agreement Witnesseth, that said taxpayer and said Commissioner of Internal Revenue hereby mutually agree that the principal amount of such liability so determined shall be final and conclusive if and when this agreement is approved by the Secretary of the Treasury or the Undersecretary.

In Witness Whereof, the above parties have subscribed their names to these presents in duplicate

Signed This_____day of_____, 192

.....

Taxpayer

By

Signed _____, 192

(Date)

.....

Commissioner of Internal Revenue

By

The above agreement has been approved by the

_____.

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 14-B—(Continued)

The approval being specifically enumerated on Schedule No. _____.

Dated _____

Original and duplicate to be accomplished and returned. cc/1

Exhibit C

STATEMENT

IT:AR:B-10
CEJ-60D

Oct. 2, 1928

In re: Mr. J. Kammerdiner,
237 South Highland Avenue
Los Angeles, California

Years	Deficiency in Tax
1925	$ 4,220.70
1926	5,969.56
Total	$10,190.26

Reference is made to the report of the Internal Revenue Agent in Charge, San Francisco, California, covering your tax liability for the years 1925 and 1926, and to your protest submitted under date of June 28, 1928.

Careful consideration has been accorded your protest in connection with the agent's findings.

Your contention that a partnership existed between you and your wife during the years 1925 and 1926 and that your wife held a vested interest in such partnership as her separate property has been denied. As no specific evidence has been furnished to substantiate your contention the total income received by you and Mrs. Kammerdiner during the years in question is considered to be community income taxable to you.

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 14-B—(Continued)

1925

Net income reported		$29,782.12
Add:		
1. Income transferred from wife's return		26,814.22
Net income adjusted		$56,596.34
Computation of Tax		
Net income subject to surtax		56,596.34
Less:		
Dividends	$ 578.82	
Personal exemption and credit for dependents	4,700.00	5,278.82
Balance subject to normal tax		$51,317.52
Normal tax at 1½% on $4,000.00		$ 60.00
Normal tax at 3% on 4,000.00		120.00
Normal tax at 5% on 43,317.52		2,165.88
Surtax on $56,996.34		3,889.45
Total Tax		$ 6,235.33
Less:		
Credit of 25% for earned net income		41.05
Total tax assessable as included on Form 866		$ 6,194.28
Tax previously assessed		1,973.58
Deficiency in tax		$ 4,220.70

Explanation of Change

1. The reason for the increase in your tax liability has been explained above.

1926

Net income reported on return	$37,281.67
Add:	
1. Income transferred from wife's return	33,573.84
Total	$70,855.51

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 14-B—(Continued)

Deduct:		
2. Error in computation on return		999.00
Net income subject to surtax		$69,856.51
Less:		
Dividends	$ 737.50	
Personal exemption and credit for dependents	4,700.00	5,437.50
Balance subject to normal tax		$64,419.01
Normal tax at 1½% on $4,000.00		60.00
Normal tax at 3% on 4,000.00		120.00
Normal tax at 5% on 56,419.01		2,820.95
Surtax on $69,856.51*n*		6,035.61
Total tax		$ 9,036.56
Less:		
Credit of 25% for earned net income		74.67
Total tax assessable as included on Form 866		$ 8,961.89
Tax previously assessed		2,992.33
Deficiency		$ 5,969.56

Explanation of Changes

1. Income reported on your wife's return has been included in your return for reasons explained above.

2. Due to errors in computation, income reported on your return was overstated by $999.00.

Payment should not be made until a bill is received from the Collector of Internal Revenue for your district, and remittance should then be made to him.

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 14-B—(Continued)

Exhibit "D"

State of California,
County of Orange—ss.

Mrs. James Kammerdiner, wife of Mr. James Kammerdiner, of Los Angeles, California, having first been duly sworn, deposes and says, that she is the wife of Mr. James Kammerdiner, petitioner referred to in attached petition to Board of Tax Appeals, and was wife of said Petitioner during the years of 1925 and 1926. She further states, upon oath, that when petitioner, Mr. James Kammerdiner, started to work on his patent rotary jar, she assisted him in various ways, by counsel, by clerical work and by co-operation in every possible way: she further states, upon oath, that while petitioner was employed out in the oilfields and other places selling his patent rotary jar she was employed in the office and took care of all office details, keeping the books, attending to correspondence and phone calls, and generally acting as inside manager of the firm. She further states that she received no fixed salary for this work and that it was agreed verbally between her and petitioner that she was to get one half of all the profits and that everything was to continue in a joint-account as it had done for years prior to 1925.

She further states that it has always been her

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 14-B—(Continued)

understanding that petitioner and herself were in partnership in the patent rotary jar business.

MRS. JAMES KAMMERDINER

Subscribed and sworn to before me this 21st day of November 1928.

[Seal] S. RAVENKAMF

Notary Public in and for County of Orange, State of California.

My Commission Expires October 18, 1930.

Exhibit "E"

State of California,
County of Los Angeles—ss.

Mr. A. C. Baimbridge, of Los Angeles, California, having first been duly sworn, deposes and says, that he is now and was during the complete years of 1925 and 1926, employed by Mr. and Mrs. James Kammerdiner, and that it has always been his understanding that both Mr. and Mrs. Kammerdiner were partners in the business of manufacturing and selling the patent rotary jars for use in the oilfields. He further states that during the years 1925 and 1926 he was in and out of the office of the firm, several times a week, on the average, and always considered Mrs. James Kammerdiner a member of the firm in the capacity of Office of Inside Manager. He states, upon oath, that he knows that she took care of the books and accounts, answered phone calls and correspondence and acted in every possible way

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 14-B—(Continued)

as a member of the firm with authority and as one who had a real interest in the business.

A. C. BAIMBRIDGE

Subscribed and sworn to before me, this 20th day of November 1928.

[Seal] H. F. OVERBECK

Notary Public in and for County of Los Angeles, State of California.

My Commission Expires May 10, 1932.

United States Board of Tax Appeals

Docket No. 41643

J. KAMMERDINER,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

ANSWER

The Commissioner of Internal Revenue by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of the petition, except the allegation that the petitioner is a member of a partnership, which is denied.

2. Admits the allegation contained in paragraph 2 of the petition.

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 14-B—(Continued)

3. Admits the allegations contained in paragraph 3 of the petition.

4. Denies that the Commissioner erred in the determination of the said deficiency as alleged in paragraph 4 of the petition.

5. Admits that the Commissioner denies that a partnership existed, but denies the remaining allegations of fact contained in paragraph 5 of the petition.

Denies generally and specifically each and every allegation contained in the petition of the above-named taxpayer and hereinbefore expressly admitted, qualified or denied.

Wherefore, it is prayed that the appeal be denied.

Signed C. M. CHAREST,
General Counsel, Bureau of Internal Revenue

Of Counsel:
T. M. MATHER,
Special Attorney, Bureau of Internal Revenue.

[Endorsed]: Filed Dec. 29, 1941.

Mr. Mitchell: I now offer in evidence an authenticated copy of a petition of the plaintiff before the United States Board of Tax Appeals, number of Docket, 46,555, relating to income for the taxable

(Testimony of James A. Kammerdiner.)

year 1927, verified by the plaintiff on the 3rd of December, 1929.

Mr. Bloom: The same objection.

The Court: All right. Overruled, and it may be received in evidence.

The Clerk: Defendant's 15.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 15.")

DEFENDANT'S EXHIBIT No. 15

United States Board of Tax Appeals

Docket No. 46555

Mr. J. KAMMERDINER

Petitioner

v

COMMISSIONER OF INTERNAL REVENUE

Respondent

PETITION

The above named petitioner hereby petitions for a re-determination of the deficiency set forth by the Commissioner of Internal Revenue, in his notice of deficiency reference 60 day letter, herewith attached, dated Oct. 14, 1929, and statement reference IT: AR:B-8 WFF dated Oct. 14, 1929, and as a basis of his proceeding alleges as follows:—

1. The petitioner is an individual (member of partnership) with principal place of busi-

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 15—(Continued)

ness and residence at 237 South Highland Avenue, Los Angeles, California.

2. The notice of deficiency in form of 60 day letter and statement and Agreement as to final determination, were received by Petitioner on or about the 17th day of October 1929, being dated October 14th 1929. Copies attached marked Exhibits "A" and "B".

3. The taxes in controversy are Income Tax for the calendar year year 1927, amounting to $9,619.95.

4. The determination of tax set forth in the above exhibits are based upon the following alleged errors—

Respondent contends that a partnership did not exist between petitioner and his wife and has denied protest against his ruling that a partnership could not be allowed, claiming that no partnership books are kept showing the capital accounts, partnership agreement, or separate accounts, and holding that petitioner's wife did not hold a vested interest in the partnership, and that the total income is taxable on a joint return.

5. The facts upon which petitioner relies as the basis of this proceeding are as follows—

(a) Ever since he started to work on his

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 15—(Continued)

patent rotary jar, from which patent his big increase in income has been derived, his wife acted as his partner in his business as well as in his home, assisted him in his work, kept the books and accounts of the business, taken care of all the correspondence and collection of accounts, and states further that his wife has been consulted and conferred with by petitioner in practically every detail of the business. It was understood then, as it had been understood for years prior to that time that petitioner and his wife were in partnership, and on the Income Tax Return for 1925 there appeared this notation, which was sworn to by Petitioner "Both Mr. and Mrs. Kammerdiner work in the business and agreement has been made that Mrs. Kammerdiner receives vested interest in one half of the property and income making hers separate property."

In support of this statement Exhibits "C" and "D" sworn statements of Mrs. J. Kammerdiner and Mrs. A. C. Bainbridge, both possessing knowledge of the facts, are attached hereto.

Mrs. Kammerdiner did not receive a salary of any definite amount for work done by her in the business, neither did petitioner as both drew out of the business whatever

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 15—(Continued)

they required and it was agreed between petitioner and his wife that the joint account which they had always carried in Bank would be continued and that Mrs. Kammerdiner would be entitled to half of the profits of the business in return for the work she performed as office manager.

In support of the above claim that a partnership existed, even though there was no signed partnership agreement, apart from the notation on Income Tax Return for 1925, made in March 1926, and in support of the claim that the fact that Mrs. Kammerdiner by acting as office manager and doing part of the work of the business was entitled to be considered a partner, petitioner refers the Board to the following cases which have a bearing upon the present proceedings:—

(b) L. S. Cobb v Commissioner. Docket No. 7136 December 9, 1927. Deficiencies for 1920-1921 re-determined)

During the taxable years petitioner's wife was a member of a partnership and her one sixth share of the partnership profits was not taxable to him. (Extract from opinion: Petitioner contends that his wife was a member of the valid partnership and owns a one sixth share of the capital and profits of the business. The Commissioner seizes upon

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 15—(Continued)

certain provisions of the partnership agreement and insists that the petitioner's wife 'had no interest in or control over the assets of the taxpayer's capital investment in the firm, or the distributable net profits thereof; she, in fact was not a partner in the firm." We find no support of the claim in the partnership agreement. The parties to the agreement were competent to enter into a valid partnership. The bonafides of the transaction is not questioned.

(c) F. C. Busche v Commissioner, Docket Nos. 9447, 10202, 10755, March 14, 1928. Deficiencies for 1920-23 re-determined. The case above was one where the earnings of the wife of the petitioner were separate property by oral agreement between husband and wife under sections 158, 159, and 160 of the Civil Code of California, and she filed a separate return of her income; held, that respondent erred in adding the wife's earnings to the income reported by petitioner.

The Commissioner in the case of present proceedings has denied that a partnership existed, and against this we have the statement of petitioner and his wife that an oral agreement had been made many years before the partnership Income Tax Return in this proceeding was prepared. As an Oral agree-

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 15—(Continued)

ment was accepted in the case of F. C. Busche v Commissioner, above referred to, petitioner prays that an Oral agreement between his wife and himself supported by sworn statement made on Income Tax Return of 1925, be accepted and partnership return be allowed to remain as presented.

(d) Charles Brown v. Commissioner, Docket Nos. 13932, 27779, 31427 Joseph Israel v. Commissioner, Docket Nos. 27780 and 31428, October 12th, 1928. Deficiencies for 1921-1923 re-determined. Where the two petitioners and their respective wives entered into a contract to carry on a mercantile business and the profits and losses were divided equally, the income derived therefrom by the wives was their separate property and was properly returned and tax paid by them, and it was error to include same in the income of petitioners on the theory that it was community property.

Under the provisions of Section 158 of the Civil Code of California, a husband and wife may enter into a partnership in California, and if there is any agreement which shows that the intention of the parties is to create a vested interest in the partnership as her separate property such intention will change the character of their property from community to

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 15—(Continued)

separate property. This does not say that the agreement must be in writing, and as there was an oral agreement between petitioner and his wife, and as your Honorable Board pointed out in the case of Brown v. Commissioner as referred to in preceding paragraph, that it was error to include wife's income with income of petitioner, and as in none of the cases of Cobb v. Commissioner, F. C. Busche v. Commissioner, mentioned in paragraphs (b) and (c) above, does it appear that the wife contributed any capital from her separate estate, and in the Busche case alone did wife appear to render any service, and as in the present case there was an oral agreement between petitioner and his wife, and his wife did actually render considerable service, petitioner prays that his case may be considered in the light of the decisions made in the cases referred to above, and that the partnership return submitted by petitioner and his wife be allowed to stand and the deficiencies charged against petitioner be cancelled.

Petitioner further prays that if the partnership is not allowed to stand for Income Tax purposes, even though he and his wife recognize it for other purposes, then, as it it permissible for husband and wife in California to send in separate returns on account of property in

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 15—(Continued)

California acquired after marriage being Community Property, he prays that the return as submitted be allowed to stand as it would be the same in every respect if submitted as community property.

JAMES KAMMERDINER,
Petitioner.

State of California,
County of Orange—ss.

Mr. J. Kammerdiner, being duly sworn, deposes and says that he is the petitioner above named; that he has read the foregoing petition, and is familiar with the statements contained therein and that the facts stated are true, except as to those facts stated to be upon information and belief and those facts he believes to be true.

JAMES KAMMERDINER,
Petitioner.

Subscribed and sworn to before me this 3rd day of December, 1929.

DAN O'HANLON,
Notary Public in and for the County of Orange, State of California.

My commission expires July 13, 1930.

(Testimony of James A. Kammerdiner.)
Defendant's Exhibit No. 15—(Continued)

"Exhibit A"

Treasury Department
Washington

Office of Commissioner of Internal Revenue.

Oct. 14, 1929.

Mr. James Kammerdiner,
237 South Highland Avenue,
Los Angeles, California.

Sir:

In accordance with Section 274 of the Revenue Act of 1926, you are advised that the determination of your tax liability for the years 1927 discloses a deficiency of $9,619.95, as shown in the statement attached.

The section of the law above mentioned allows you to petition the United States Board of Tax Appeals within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter for a redetermination of your tax liability.

However, If You Do Not Desire to Petition, you are requested to execute the inclosed Form 866 and forward both original and duplicate to the Commissioner of Internal Revenue, Washington, D. C. for the attention of IT:C:P-7. The signing of this agreement form will expedite the closing of your return by permitting an early assessment of any

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 15—(Continued)

deficiencies and preventing accumulation of interest charges, since the interest period terminates thirty days after filing the agreement form, or on the date assessment is made, whichever is earlier; Whereas If No Agreement Is Filed, interest will accumulate to the date of assessment of the deficiencies.

Respectfully,
ROBT. H. LUCAS,
Commissioner.
By (signed) DAVIS BURNET
Deputy Commissioner.

Inclosures:
Statement
Form 866
Form 882

"Exhibit B"

Statement from Commissioner.

IT:AR:B-9
WFF.

Oct. 14, 1929.

In re: Mr. James Kammerdiner,
237 South Highland Avenue,
Los Angeles, California.

Tax Liability

Year	Corrected Tax Liability	Tax Previously Assessed	Deficiency
1927	$14,006.55	$4,386.60	$9,619.95

The report of the Internal Revenue Agent in Charge at San Francisco, California, a copy of which has been furnished you, which explains in detail the determination of the deficiency has been reviewed and approved by this office.

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 15—(Continued)

Net income reported	$45,963.74
Add:	
1. Additional income from business	$45,963.74
	$91,927.48
Less:	
2. Contributions allowed	400.00
Net income as adjusted	$91,527.48

Explanation of Adjustments

1. Gross income reported has been increased under Article 31, Regulations 69, $45,027.48 which represents income from your business which was reported on Mrs. Kammerdiner's return since an investigation of your case discloses that no partnership books are kept showing the capital accounts, partnership agreement, or separate bank accounts. It is, therefore, held that your wife did not hold a vested interest in the partnership, and that the total income is taxable on a joint return.

2. Contributions in the amount indicated above have been allowed as a deduction from gross income under Article 251, Regulations 69.

Computation of Tax.

Net income subject to surtax		$91,527.48
Less:		
Dividends	202.42	
Personal exemption and credit for dependents	4,700.00	4,902.42
Balance subject to normal tax		$86,625.06
Normal tax at 1½% on $4,000		$ 60.00
Normal tax at 3% on 4,000.00		120.00
Normal tax at 5% on $78,625.06		3,931.25
Surtax on $91,527.48		10,050.22
Total tax		$14,161.47

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 15—(Continued)

Credit for earned net income	$ 154.92
Total tax assessable	$14,006.55
Tax previously assessed	4,386.60
Deficiency	$ 9,619.95

Inasmuch as Item One is the only issue, and is now pending before the United States Board of Tax Appeals for the years 1925 and 1926 formal notice of deficiency is mailed you at this time without affording you an opportunity for a hearing before the Unit.

Payment should not be made until a bill is received from the Collector of Internal Revenue for your district, and remittance should then be made to him.

Exhibit "C"

State of California,
County of Orange—ss.

Mrs. James Kammerdiner, wife of Mr. James Kammerdiner the Petitioner in case of Mr. J. Kammerdiner V. Commissioner of Internal Revenue concerning Income Tax for calendar year 1927, having been first duly sworn, deposes and says, That she is the wife of Mr. James Kammerdiner petitioner referred to in attached petition to Board of Tax Appeals, and was wife of said petitioner during the years 1925, 1926, and 1927, years for which Income Tax Returns on partnership basis have been prepared and submitted. She further states, upon oath, that when petitioner, Mr. James Kammerdiner, started to work on his patent rotary jar, as far back as the year 192..., she assisted him in every way possible, by counsel, by clerical work and by co-operation; she further states, upon

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 15—(Continued)

oath, that while petitioner was employed out in the oilfields and other places selling his patent rotary jar, she was employed in the office and took care of all office details, keeping the books, attending to correspondence and phone calls, attending to sending out statements and collecting accounts, and generally acting as inside manager of the business. She further states upon oath, that she received no fixed salary for this work as it was understood and verbally agreed upon between her and petitioner that she had and was entitled to one half interest in the business and one half of the profits of the business, and that as there never had been any signed agreement between her and petitioner, her husband, it being always understood that they were partners in every sense of the word, it was verbally agreed to continued everything in joint names and account in banks in joint names, as has always been done in the past.

She further states, upon oath, that it has always been her understanding that petitioner and herself were in partnership in the patent rotary jar business as in everything else since marriage.

MRS. JAMES KAMMERDINER

Subscribed and sworn to before me this 3rd day of December 1929.

DAN O'HANLON

Notary Public in and for County of Orange, State of California.

My commission expires July 13, 1930

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 15—(Continued)

"Exhibit D"

State of California,
County of Los Angeles—ss.

Mr. A. C. Bainbridge, of Los Angeles, California, having first been duly sworn, deposes and says, *Tat* he is now and was during the years of 1925, 1926 and 1927, employed by Mr. and Mrs. James Kammerdiner, Mr. James Kammerdiner being the petitioner in petition proceedings attached hereto, and that it has always been his understanding ever since he started to work for Mr. and Mrs. James Kammerdiner, that Mr. and Mrs. James Kammerdiner were partners in the business of manufacturing and selling the patent rotary jars patented by Mr. James Kammerdiner, assisted by Mrs. James Kammerdiner, for use in oilfields.

He further states, also upon oath, that during the years 1925, 1926, and 1927 he was in and out of the office of the firm several times a week, on the average, and always considered Mrs. James Kammerdiner a member of the firm in the capacity of office or Inside manager. He also states, upon oath, that he knows that she took care of the books and accounts, answered correspondence and took charge of the business in the absence of Mr. James Kammerdiner, and acted in every possible way as a mem-

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 15—(Continued)

ber of the firm with authority and as one who had a real interest in the business.

A. C. BAIMBRIDGE

Subscribed and sworn to before me this 4th day of December 1929.

H. F. OVERBECK

Notary Public in and for County of Los Angeles, State of California.

My commission expires May 16, 1932.

United States Board of Tax Appeals

Docket No. 46555

J. KAMMERDINER,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ANSWER

The Commissioner of Internal Revenue by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of the petition.

2. Admits the allegations contained in paragraph 2 of the petition.

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 15—(Continued)

3. Admits the allegations contained in paragraph 3 of the petition.

4. Denies that the Commissioner erred in the determination of the said deficiency as alleged in paragraph 4 of the petition.

5. (a), (b), (c) and (d). Denies the allegations of fact contained in subdivisions (a), (b), (c) and (d) of paragraph 5 of the petition.

Denies generally and specifically each and every allegation contained in the petition of the above-named taxpayer not hereinbefore expressly admitted, qualified or denied.

Wherefore, it is prayed that the appeal be denied.

(Signed) C. M. CHAREST
General Counsel, Bureau of
Internal Revenue

Of Counsel:

T. M. MATHER,
Special Attorney,
Bureau of Internal Revenue.

[Endorsed]: Filed Dec. 29, 1939.

By Mr. Mitchell:

Q. According to this petition, from page 2, this [93] appears: "Mrs. Kammerdiner did not receive a salary of any definite amount for work done by her in the business, neither did petitioner as both

(Testimony of James A. Kammerdiner.)
drew out of the business whatever they required and it was agreed between petitioner and his wife that the joint account which they had always carried in the bank would be continued and that Mrs. Kammerdiner would be entitled to half of the profits of the business in return for the work she performed as Office Manager."

That was true, was it not?

Mr. Smith: I think that instead of reading something and asking the witness about it, I think the witness should have an opportunity to read it and study it, if your Honor please.

The Court: He has a right to ask him if that is what he swore to.

By Mr. Mitchell:

Q. Did you understand what I read?

A. I understand it, but I don't understand the question you have tied up with it.

The Court: He is reading a statement to you wherein you say that your wife was Office Manager and received no salary. He wants to know if that statement, which was made under your signature, was true at that time.

The Witness: Yes. She didn't receive any salary.

By Mr. Mitchell:

Q. And did you and Mrs. Kammerdiner agree that the [94] joint accounts which you had always carried, would be continued in the rotary jar business? A. Yes.

(Testimony of James A. Kammerdiner.)

Q. And that Mrs. Kammerdiner would be entitled to half of the profits of the business in return for the work she performed as Office Manager?

A. Well, that sounds kind of odd to me because I don't know why either her or I would put that out.

Q. You question that now? A. I would.

Q. Now, I call your attention also to page 1 in which you state: "It was understood then—" that is the time of the agreement, referring to '23— "as it had been understood for years prior to that time, that petitioner and his wife were in partnership, and on the income tax return—" and so forth.

That is correct, is it not, that it had been understood between you and your wife for years that you had been in partnership, or isn't it?

A. On what date is that?

Q. This was——

A. It has been for years, anyhow. Ever since we have been first married.

Q. Let's read it here.

"The facts upon which the petitioner relies as the basis of this proceeding are as follows: [95]

"(a) Ever since he started to work on his patent rotary jar, from which patent his big increase in income has been derived, his wife has acted as his partner in his business as well as in his home, assisted him in his work, kept the books and ac-

(Testimony of James A. Kammerdiner.)

counts of the business, taken care of all the correspondence and collection of accounts—" that is all correct so far? A. Yes.

Q. "And states further that his wife has been consulted and conferred with by petitioner in practically every detail of the business."

Is that correct?

A. Well, not all the details.

Q. Some of the outside details you handled personally?

A. Yes, around the shops and the wells.

Q. Where it took an expert in the field?

A. I done the work in the field.

Q. Then it goes on: "It was understood then—" I assume you refer to the origin of the rotary jar business—"as it had been understood for years prior to that time—"

Was that the understanding for years prior; is that correct?

A. What is the question, please?

Q. This arrangement with your wife that was made in 1923. [96] A. Yes.

Q. Is that the same as existed for years prior to that? A. Yes.

Q. I now call your attention to Defendant's Exhibit 15 at the bottom of the first page in which this appears—this also is verified by you, Mr. Kammerdiner—I mean it was sworn to by you—"Ever since he started to work—" you are referring to yourself—"on his patent rotary jar, from which

(Testimony of James A. Kammerdiner.)

patent his big increase in income has been derived, his wife has acted as his partner in his business as well as in his home."

Was that correct?

A. Well, our office was in our home.

Q. Yes.

A. And she hired outside help to take care of her work in the house. She was busy in the office.

Q. And was also busy in the office; is that what you say? A. I say she was busy in the office.

Q. Well, you say here "His wife has acted as his partner in his business as well as in his home."

Is that correct?

A. Yes, that is correct.

Q. Both? A. Yes. [97]

Q. Now, I call your attention to your wife's affidavit attached to your petition. I am referring to Exhibit 15, Defendant's, sworn to December 3, 1929 by Mrs. James Kammerdiner, to this portion of her affidavit:

"She further states, upon oath, that she received no fixed salary for this work as it was understood and verbally agreed upon between her and petitioner that she had and was entitled to one-half interest in the business and one-half of the profits of the business."

Is that correct so far as I have gone?

A. Yes, that is all correct.

Q. "And that as there never had been any

(Testimony of James A. Kammerdiner.)

signed agreement between her and the petitioner, her husband, it being always understood that they were partners in every sense of the word, it was verbally agreed to continue everything in joint names and accounts in banks in joint names as had [98] always been done in the past."

Is that correct?

A. Yes.

Q. "She further states, upon oath. that it has always been her understanding that petitioner and herself were in partnership in the patent rotary jar business as in everything else since marriage."

A. I would say that was right.

Mr. Mitchell: The defendant offers out of order the reporter's transcript of the proceedings in the same case. The two cases were consolidated to which Defendant's Exhibits 14 and 15 refer, the same cases consolidated for trial and it involves the income tax years of 1925, '26 and '27.

Mr. Bloom: The same objection is made.

The Court: I will not allow that. You can read any portion you want. You can't throw at me the entire transcript. Let me see how many pages there are. I don't want all the testimony that has been received there unless there is——

Mr. Mitchell (Interrupting): It relates to the issue in this case.

The Court: We can't re-try it. On that basis I will sustain the objection to this. I will allow you to call my attention to anything implying a

(Testimony of James A. Kammerdiner.)

contradiction. You are making a very excessive record for somebody here. It isn't customary to take another proceeding and have all of the record brought up. It is only anything that is contradictory [99] of the position taken now that is admissible. I will stay all night, if necessary, and you can read to me the portions that you deem are contradictory, but I am not going to take the entire transcript and read it through.

Mr. Mitchell: The purpose, of course, is to show admissions and declarations.

The Court: You can go ahead and pick them out.

Mr. Mitchell: And to support the Government's defense that the factual issues involved in this case and in that case are identical and that it has been adjudicated.

The Court: There is no adjudication of prior years, by the Board of Tax Appeals, that is binding upon this Court.

Mr. Mitchell: As to the fact of whether or not there was a partnership?

The Court: That is not binding on this Court. It depends on the proceeding in which they arise.

Mr. Mitchell: Might I cite a Supreme Court case?

The Court: I am not interested in that. Later on I will do that, but it doesn't say that I am bound by the evidence that was produced there.

Mr. Mitchell: No.

The Court: Then pick out the things you want

(Testimony of James A. Kammerdiner.)

to read and read them, if they are material, so counsel can object. I don't want to be caught on appeal with an entire record, the contents of which I don't know anything about, by allow- [100] ing it to go in. There may be all sorts of erroneous testimony received there. The Board of Tax Appeals isn't a court. They are not bound by the rules of evidence; they may hear hearsay testimony.

Mr. Mitchell: They are bound by the rules of evidence as existing in the District of Columbia.

The Court: I don't know as they are governed by those rules.

Mr. Mitchell: That is the rule of the Board, if I am not mistaken.

The Court: Well, administrative bodies can change their rules of evidence tomorrow. They are bound by nothing but their own will, limited by the rule that they shouldn't be arbitrary, which subjects them to review.

I am a great believer in administrative tribunals, but I am also a believer in the independence of legal tribunals not to be bound by adjudications of others, except where the law makes them so.

I will let you show me if the Board of Tax Appeals found that they were partners in 1928, but I am not bound by that to find that they were partners at the time of death. I will let you show me that in your brief, if you want to argue, but for the present read to me the portions you say are admissible as admissions against interest. Don't

(Testimony of James A. Kammerdiner.)

do that as a part of this cross examination. Finish the cross examination and then offer that as a part of your case. [101]

Mr. Mitchell: Your Honor apparently misconstrues the Government's contention. We are not contending that it was a partnership at the time of death. We are contending that the wife had an interest in the property at the time of death.

The Court: All right.

Mr. Mitchell: To the extent of one-half. The tax payer contends that she didn't have any interest in the property.

The Court: I understand your position. He says all this is a partnership, with a right of survivor attached to it, and you say it isn't.

Mr. Mitchell: I don't say that. Neither do I say there was no joint tenancy.[102]

The Court: All right. Point out what I have asked you to pick out and finish the cross examination of this witness, and then as a part of your case you can read the portions in that transcript which show contradiction. I am not going to take the entire record. It is too dangerous. [103]

The Court: After you read those into the record you may ask. You don't need to ask him any question as to whether he said that or not. It is stipulated that he said what is in the record and that he believed the answer to be true as of the time he gave them?

Mr. Mitchell: It is so stipulated.

(Testimony of James A. Kammerdiner.)

The Court: You stipulate he spoke the truth under oath, don't you?

Mr. Smith: Oh, yes. There is no doubt about that so [104] far as his testimony is concerned.

The Clerk: Sixteen.

Mr. Mitchell: That will be 16 for identification.

The Court: All right. It may be received for identification.

(The document referred to was received and marked "Defendant's Exhibit No. 16 for identification.")

By Mr. Mitchell:

Q. There was no understanding between you and your wife in about 1923 that if you made any money you would divide it, was there?

A. No, there was no division made of that kind that I know of.

Q. And there was no agreement with your wife that if you lost any money you would stand the losses equally, was there? A. No.

Mr. Bloom: Just a minute. Is counsel questioning from the document in his hand?

Mr. Mitchell: I am asking the witness questions.

Mr. Bloom: Is that from the transcript that we were just discussing?

Mr. Mitchell: It may be.

The Court: The objection will be sustained. The witness has already stated what the understanding was, the sense in which losses and profits were to

(Testimony of James A. Kammerdiner.)

be divided as [105] between him and his wife; were to be shared, I mean.

Mr. Mitchell: I believe those answers were given in answer to leading questions of the Court.

The Court: That is all right. The Court has the right to ask leading questions, especially when counsel tries to take a legal definition and put it to the mouth of a layman what would be a legal definition of partnership, which is not fair. That is why I came to the witness' defense because I knew what the facts were, what you were trying to do. You were trying to define the partnership in the sense of the Code, which isn't fair to do with a lay witness. You can read from the transcript the contradictory statements without asking him questions.

By Mr. Mitchell:

Q. Coming back to the patent, Mr. Kammerdiner, how did you happen to have that patent, that invention patented?

The Court: Objection will be sustained; it is immaterial. He didn't steal it; it was his own. He had a right to give it to his wife.

Mr. Mitchell: May I make my offer of proof——

The Witness: (Interrupting): No.

Mr. Mitchell (Continuing): ——of what I want to bring out?

The Court: Offers of proof are not allowed. They are condemned by the Court.

Mr. Mitchell: What is that? [106]

(Testimony of James A. Kammerdiner.)

The Court: Offers of proof are condemned by the Court. Your question should be so clearly stated that it would imply what you are seeking.

By Mr. Mitchell:

Q. Did Mrs. Kammerdiner assist you in procuring the patent? A. Yes.

Q. Isn't it true that the procurement of the patent was Mrs. Kammerdiner's idea originally?

A. No.

Mr. Bloom: Objected to as incompetent, irrelevant and immaterial.

The Court: Objection sustained.

By Mr. Mitchell:

Q. Did Mrs. Kammerdiner procure an attorney to perfect your patent? A. Yes.

Mr. Bloom: Objected to as incompetent, irrelevant and immaterial.

The Court: Objection sustained.

By Mr. Mitchell:

Q. Did you turn over all the matters of procuring the patent over to your wife?

Mr. Bloom: Objected to as incompetent, irrelevant and immaterial.

The Court: Objection sustained. [107]

By Mr. Mitchell:

Q. Did your wife volunteer to handle all of the matters in connection with the procurement of the patent?

Mr. Bloom: Objected to as incompetent, irrelevant and immaterial.

(Testimony of James A. Kammerdiner.)

The Court: Objection sustained.

By Mr. Mitchell:

Q. Before you procured patents, did you attempt to obtain a partner outside of your wife?

Mr. Bloom: Objected to as incompetent, irrelevant and immaterial.

The Court: Objection sustained.

Mr. Mitchell: I mean a partner in respect to the promotion of the patent rights.

The Court: The objection is sustained, not proper cross examination. From now on I will limit it strictly to cross examination. I wouldn't admit that on direct, either, but I am going to limit it strictly. You have examined this man sufficiently without going into the details of the patent. You are dealing with husband and wife, not with two partners. [108]

The Court: In the ordinary sense.

Mr. Mitchell: May I ask your Honor a question?

The Court: No, I don't want the question. I merely said you are going too far in this cross examination and I am going to stop it. That is all there is to it.

By Mr. Mitchell:

Q. You testified on direct examination, Mr. Kammerdiner, that you never made any assignment of these patents to anyone?

A. No, sir.

(Testimony of James A. Kammerdiner.)

Q. You never even made the formal assignment to your wife? A. No, sir.

Q. Did you and your wife ever make an assignment of the patent to anyone? A. No, sir.

Q. Did you or your wife ever make an assignment of rights to manufacture or rent under the patent rights?

A. Yes. We licensed, and we gave the California [109] National a foreign right to sell them outright, but in the United States it was renting.

Q. All foreign rights in all countries?

A. All foreign rights.

Q. For a consideration? A. How?

Q. For a consideration? You were paid something for that? A. Oh, yes.

Q. Did that go into the joint account?

A. Yes.

Q. The receipts? A. Yes.

Mr. Mitchell: That is all. [110]

Redirect Examination

Q. Mr. Kammerdiner, I call your attention to Defendant's Exhibit No. 14 in relation to the Fictitious Name Certificate. A. Yes.

Q. Counsel examined you in relation to this. It had to do with the rotary jar business, the Kammerdiner Rotary Jar Company? A. Yes.

Q. Do you remember who prepared that for you and what was said at the time you prepared it?

A. The only thing I remember about that, you know I was to three or four different attorneys.

(Testimony of James A. Kammerdiner.)

Q. Well, let me ask you this: Did not Mr. Vogel in our office prepare this and suggest——

A. (Interrupting) I believe he spoke about it. We needed that in case of a lawsuit, if somebody attacked us.

Q. In other words, if you sued for an infringement of the patent in your name, it was necessary that you file this in order to sue in the name of the Kammerdiner Rotary Jar? A. Yes.

Q. That was the circumstance? [111]

A. Yes. That is the only thing that I knew about it. I believe Mr. Vogel was the one that set that up.

Q. Who set it up? A. Yes.

Q. Did you know in 1923 or 1928 the difference, what you might call the technical difference between community property and Joint Tenancy property, partnership property or partnership, or other property?

A. After all of the wrestling I have gone through, I don't know the difference today.

Q. Not even today?

A. No. I have no idea of it.

Q. Mr. Kammerdiner, the money that was realized from your rotary jar enterprise was used for living, or is represented in joint tenancy property that Mrs. Kammerdiner and you left?

A. Yes.

The Court: By the way, you didn't at the end of the year take a profit and loss statement with yourself and your wife?

(Testimony of James A. Kammerdiner.)

The Witness: No.

The Court: And say, "My dear, this is yours"?

The Witness: No.

The Court: "Do as you please with it and I will take this"?

The Witness: No. [112]

By Mr. Smith:

Q. Mr. Kammerdiner, when you executed and filed Exhibit No. 14, which we term a Fictitious Name Certificate, did you and Mrs. Kammerdiner make any agreement at that time other than any other agreement you had before? A. No.

Q. There was no understanding different than you ever had? A. No.

Q. None at all? A. No change.

Q. Mr. Kammerdiner, in your Federal Estate Tax return, Government's Exhibit 12, that was prepared by attorneys known as Chase & Chase?

A. Chase & Chase.

Q. Who were your attorneys at that time?

A. Barnes, Chase & Chase.

Q. Barnes, Chase & Chase? A. Yes.

Q. Our office gave you no advice or counseled you at all in relation to that return?

A. Not a bit, no, sir.

Q. We didn't come into the picture until after the Government had audited that return?

A. Yes.

Mr. Bloom: At this time, your Honor, I offer in evi- [113] dence, and this is in rebuttal of the

(Testimony of James A. Kammerdiner.)

contention made by the Government, as to estoppel by reason of the 1926, '27 and '28 representations. I am making the offer at this time for the reason that if Mr. Mitchell should rest, we wouldn't have anything to rebut upon his case, so that not knowing whether he is going to call any witness or not, I would like to introduce them at this time.

The Court: Well, go ahead.

Mr. Mitchell: I have no objection.

The Court: Gentlemen, in some respects I am strict. I am strict against wasting the time but in other respects, especially when we try a case without a jury, I am very liberal. I don't care when the thing comes in; you can put it in now if you wish.

Mr. Mitchell: May I state the Government's objection?

Counsel states that this is offered in rebuttal of the Government's estoppel contention, which is based upon representations relied upon by the Government to its detriment. The representations were made in respect of 1925, '26 and '27. This evidence relates to the year 1928 and goes to establish, as I understand it, the fact that in 1929, when the 1928 tax was being considered by the Bureau, some Revenue Agent in the Income Tax Division of the Revenue Agent's Office had a copy of the 1928 so-called Joint Tenancy Agreement in his possession.

I will stipulate that that agent had such an agreement [114] in his possession and it was a Govern-

(Testimony of James A. Kammerdiner.)

ment agent in the employ of the Government, but I object on the ground that the Government simply can't know what every agent has in his possession back in 1929.

The Court: That is all right. I wouldn't make any comment on that. Let me take a look at that.

Mr. Bloom: This is our protest, Mr. Kammerdiner's protest. These are the final letters.

The Court: This is the Agent's letter, and this is the protest, and this is the action of the Internal Revenue.

Mr. Bloom: Yes, your Honor.

The Court: Do they relate to the same year?

Mr. Bloom: Yes, all to 1928. One letter, I believe, is addressed to Mrs. Kammerdiner and the other to Mr. Kammerdiner.

The Court: The objection will be overruled. They may be received as one Exhibit, as bearing upon any question of estoppel.

The Clerk: Plaintiff's 10.

(The documents referred to were received in evidence and marked "Plaintiff's Exhibit No. 10.")

(Testimony of James A. Kammerdiner.)

PLAINTIFF'S EXHIBIT No. 10

IT:R

Treasury Department
Internal Revenue Service
Los Angeles, California

Office of
Internal Revenue Agent in Charge

Mr. and Mrs. J. Kammerdiner
Doing business as J. Kammerdiner
237 South Highland Avenue
Los Angeles, California

In re: Income Tax
Date of report: May 15, 1930
Year covered: 1928

Sir:

There is attached a statement setting forth adjustments which this office proposes to recommend affecting the distributive or beneficial interests shown on your return, and a form of acceptance. If the adjustments suggested are satisfactory and you desire that the recommendations be forwarded promptly to the Bureau at Washington for review, the form of acceptance should be signed and forwarded to this office.

If you do not agree with the conclusions set forth in the attached statement it is desired that every opportunity be afforded you to present to this office any objections or additional information. You are

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)

accordingly granted thirty days from the date of this letter within which you may, if you so desire, protest the proposed adjustments. The protest and any additional statement of facts must be submitted to this office, executed in triplicate under oath, and should contain the following information:

(a) The name and address of the partnership or fiduciary;

(b) The designation of the year or years involved;

(c) An itemized schedule of the findings to which exception is taken;

(d) A summary statement of the grounds relied upon in connection with each exception;

(e) In case a hearing is desired a statement to that effect.

(f) In case the protest is prepared or filed by an attorney or agent it shall have thereon a statement signed by such attorney or agent showing whether or not he prepared it and whether or not the attorney or agent knows of his own knowledge that the facts therein are true.

If a protest is filed it will be given careful consideration in this office before the recommendations are forwarded to Washington for action. In the event that you do not protest within the thirty-day

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)

period, the case will be forwarded immediately thereafter to the Bureau at Washington for review.

In the event the recommendations are not approved upon review in Washington you will be notified and given opportunity to discuss the changes with this office, or should you fail to protest to this office, any protest which you may subsequently file with Washington will be referred to this office for consideration.

Please acknowledge receipt by return mail.

Respectfully,

ALF OFTEDAL

Internal Revenue Agent in Charge.

Inclosures:

W. D. Chandler
Examining Agt.

In re: Mr. and Mrs. J. Kammerdiner

Table of Contents

Preliminary Statement
Schedules 1 and 1-A
Exhibit A

Preliminary Statement

Summary

Year
1928

Taxable Income Decreased
$168,817.20

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)

The business reported on Lines 1-2 and 3 of Form 1065 is conducted in the name of J. Kammerdiner. No written partnership agreement has ever existed between J. Kammerdiner and his wife Myrtle B. Kammerdiner and the business has at no time been held out to the public as a partnership. Contracts in connection with the business are made in the name of J. Kammerdiner and advertising matter holds the business out to the public as the individual business of J. Kammerdiner.

The business originated in 1923 when J. Kammerdiner obtained a patent on an apparatus, called a "Rotary jar" which is used in the recovery of drilling apparatus which becomes stuck in the drilling of oil wells.

Prior to the year 1926 J. Kammerdiner filed his returns of the business as an individual. For the years 1925 to 1927, inclusive, returns were made on Form 1065 for the alleged partnership of Mr. and Mrs. J. Kammerdiner. In rendering the returns on Form 1065 for these years reliance was placed on an alleged oral partnership agreement between husband and wife.

The returns for 1925 to 1927, inclusive, were the subject of prior examinations and it was held by examining officers that no partnership existed and the entire income was treated as income of husband.

Protests were submitted by both husband and wife, as to the findings, and the additional taxes

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)

recommended for assessment have not been paid. J. Kammerdiner informed examining officer that the protests are slated to be acted upon by the Board of Tax Appeals.

As of January 3, 1928, a document was drawn up for and signed by J. Kammerdiner and his wife, Myrtle B. Kammerdiner, which they designate as a partnership agreement but which in fact is a joint tenancy agreement and was so considered by the attorney, Kimpton Ellis, who drew it up for the taxpayer's. See Exhibit A.

This agreement states, among other things, that all of the assets of the "Rotary jar" business are the community property of husband and wife. The principal asset of the business is the patent which was obtained by the husband in 1923 and under the protection of which he manufactures the "Rotary jar" which produces the income. This patent has never been assigned by J. Kammerdiner and remains his separate property to continue to hold or to dispose of as he may see fit.

Satisfactory evidence was submitted as to the joint ownership of all of the property which produced the income which was reported on Lines 4-5-7-9 and 10 of Form 1065.

In reports under even date on J. Kammerdiner and Mrs. Jas. Kammerdiner, examining officer has allocated all of the income from the "Rotary jar" business to husband and the other income has been

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)

allocated between husband and wife on a fifty fifty basis.

The members of the alleged partnership do not accept examining officer's findings and it is assumed that protests will be submitted as was done for prior years.

SCHEDULE 1

Year ended 12-31-28

Net Income	
Net income as disclosed by return	$168,817.20
As corrected	None
Net adjustment	$168,817.20
Nontaxable income and additional deductions:	
(a) $168.817.20	
Total	$168,817.20
Net adjustment as above	$168,817.20

SCHEDULE 1-A

Explanation of Items

(a) See reports under even date covering examination of returns of J. Kammerdiner and Mrs. Jas. Kammerdiner.

It is held that no partnership exists and the income returned by the alleged partnership has been included in the separate returns of the individuals as their interests appear, as explained in reports of even date.

Exhibit A

(Copy)

The undersigned James A. Kammerdiner and

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)

Myrtle B. Kammerdiner, husband and wife, of Los Angeles, California, hereby state, declare and agree that the business of manufacturing, renting and selling Rotary Jars, heretofore conducted by them under the name of James A. Kammerdiner, at 237 South Highland Avenue, Los Angeles, California, all the assets of which business is their community property, is now and all increase or change thereof shall be, their joint property with right of survivorship.

In Witness Whereof we have hereunto affixed our signatures at the City of Los Angeles, California, on the 3rd day of January, 1928.

JAMES A. KAMMERDINER
MYRTLE B. KAMMERDINER

(Copy)

State of California,
County of Los Angeles—ss.

On this 3rd day of January, 1928, before me Kimpton Ellis, a Notary Public in and for the said county of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared James A. Kammerdiner and Myrtle B. Kammerdiner, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

(Testimony of James A. Kammerdiner.)
Plaintiff's Exhibit No. 10—(Continued)

In Witness whereof, I have hereunto set my hand and affixed my official seal in said County the day and year in this certificate first above written.

[Seal] KIMPTON ELLIS
Notary Public in and for said County of Los Angeles, State of California.

In re: Mrs. Jas. Kammerdiner

Place.....
Date.....

To Be Used in Case the Findings in Report Are Not Conceded

Internal Revenue Agent in Charge,
Los Angeles, California.

Receipt is hereby acknowledged of the report dated May 15, 1930, covering the income tax liability for year 1928.

Additional written evidence will be submitted to your office in triplicate within 30 days from the date of such report.

This will be submitted over the taxpayer's sworn signature.

(Signed).....
.....
.....

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)

Treasury Department
Bureau of Internal Revenue
Los Angeles Division

May 5, 1930

Community Property, Advice to Taxpayers

The Bureau of Internal Revenue holds that community income cannot be divided for income tax purposes but must be returned and the tax paid by the husband who, under the laws of the State, has the management and control of such property. However, pending final court adjudication, in rendering original returns hereafter husband and wife may each report one-half of the community income. In California, this applies only to the income from community property acquired on or after July 29, 1927, and to compensation earned on or after that date. For your information and protection, you are advised that in auditing individual returns, this office will proceed as follows:

1. If husband and wife filed separate original returns and divided the community income, consideration of the issue will be deferred pending final court decision. Unless due to the running of the statute of limitations on assessments or taxpayer's non-acquiescence in proposed adjustments of other issues (in which cases, a formal notice of deficiency or 60-day letter will be issued), the report of the field

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)

investigation will be held either in this office or the Bureau. If other adjustments produce an overassessment, claim for refund should be filed. Otherwise taxpayer will be informed of the result of the litigation when concluded.

2. If no division of community income is shown in separate returns filed by husband and wife, taxpayers who intend to claim the benefit of the community property law in order to protect their interests should file claims for refund with the appropriate Collector in the name of the spouse reporting the entire community income.

3. If only one return was filed by husband or wife and that return was not a joint return taxpayers desiring the benefit of the community property law should file a claim for refund with the appropriate Collector.

4. Taxpayers who file joint returns are advised that under existing procedure they will not be permitted to file separate returns. (See R. Downes, 5 B.T.A. 1029; Buttolph v. Commissioner, 29 Fed. (2d) 695).

All claims filed with Collectors will be forwarded to the Claims Control Section, Income Tax Unit.

Taxpayers claiming the benefit of the community property law but who are in agreement with field investigations of other issues, should execute Form 870—Agreement for Immediate Assessment—rather

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)

than Form 866—Agreement as to Final Determination of Tax Liability.

C. P. Mim. 3 (Rev.)

Protest
of
James Kammerdiner
237 South Highland Avenue,
Los Angeles, California

Against the

Proposed Assessment of Additional Income Tax
For the Calendar Year 1928

Los Angeles, California
June 14, 1930.

Hon. Alf Oftedal,
Internal Revenue Agent in Charge,
Los Angeles, California.

Your File IT:R

Dear Sir:

The above-named taxpayer acknowledges receipt of two Revenue Agent's reports dated May 15, 1930, under the above reference proposing certain income adjustments which, if sustained, will result in a deficiency in income tax for the calendar year 1928 in the amount of $19,716.33. Inasmuch as the proposed additional assessment is, in the opinion of counsel, without sound legal basis, this protest against the Agent's adjustments is being submitted for the consideration of your office within the 30-

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)

day period granted for such purpose by your letter. An oral conference is also requested. There is but one point in controversy and it will be discussed briefly as follows:

Income From Property Held In Joint Tenancy

The Revenue Agent has included as a part of the taxpayer's gross income the entire income from the "Rotary Jar" business of himself and wife in spite of the existence of a written joint tenancy contract which was noted by the Agent but which he refuses to recognize for income tax purposes. The Agent states in part:

> "As of January 3, 1928, a document was drawn up for and signed by J. Kammerdiner and his wife, Myrtle B. Kammerdiner, which they designate as a partnership agreement but which in fact is a joint tenancy agreement and was so considered by the attorney who drew it up for the taxpayer. See Exhibit A. * * * The principal asset of the business is the patent which was obtained by the husband in 1923 and under the protection of which he manufactures the 'Rotary Jar' which produces the income. * * * The entire income from the 'Rotary Jar' business is held to be income of J. Kammerdiner in view of the fact that no partnership exists."

The Revenue Agent thus freely acknowledges that the agreement is a joint tenancy agreement

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)

but nevertheless refuses to effectuate it. The full text of the agreement is set forth in Exhibit A attached to the Agent's report. While the verbiage of the agreement could undoubtely be improved in some respects, no misunderstanding can attach to the import of its final words:

> "is now (January 3, 1928), and all increase or change thereof shall be, their joint property with right of survivorship."

The right of survivorship necessarily attaches to joint tenancy and need not be specifically mentioned. The fact that it was specifically mentioned, however, removes the last vestige of possible doubt as to just what kind of estate was being created. The Agent was therefore perfectly correct in denominating it a joint tenancy agreement. In the opinion of taxpayer's counsel, the agreement in question would be held to be a valid contract in any court of law or equity.

The nature of joint tenancy of property in California is well known. Where one of the joint tenants is a married woman, as in the case at bar, her interest in the joint property and in the income therefrom is a present vested interest in no respect whatever inferior to that of her husband or of any other joint tenant. Nor is her share of the joint tenancy income subject in the slightest degree to the control of her husband as in the case of community income. Her right to report her share of

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)

joint tenancy income on her separate income tax return is therefore beyond all cavil and in fact has been exemplified in the present Agent's report in connection with all of Mr. and Mrs. Kammerdiner's property excepting only the "Rotary Jar" property. For instance, the general form of the following statement on page 6 of his report recurs a number of times:

> "The gain from sales reported on line 9 of Form 1065 was derived from property owned jointly by husband and wife and has, therefore, been allocated to them on a fifty fifty basis in their separate returns."

The Agent refuses to divide the income from the "Rotary Jar" business because of his belief "that no partnership exists". He states that the "Rotary Jar" agreement "in fact is a joint tenancy agreement" but still refuses to divide the income, evidently considering it community.

In this connection your attention is invited to the following provisions of the California Civil Code.

> Sec. 158. Either husband or wife may enter into any engagement or transaction with the other or with any other person, respecting property, which either might if unmarried; subject, in transactions between themselves, to the general rules which control the actions of persons occupying confidential relations with each other, as defined by the title on trusts.
>
> Sec. 161. A husband and wife may hold

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)

property as joint tenants, tenants in common or as community property.

A reading of the above sections shows clearly that husbands and wives in California have the utmost freedom of contract with each other respecting property and are permitted to hold property under various forms of tenure, not being restricted in any sense to the community form. With the mutual consent of each, either verbally or in writing, existing community can be instantly dissolved and a separate or joint or common estate created. Section 1636 of the Civil Code provides that contracts, if lawful, must be so interpreted as to effectuate the mutual intentions of the contracting parties.

In view of the law and facts outlined above it is submitted that the agreement of January 3, 1928 was a valid lawful contract and whatever the tenure by which the property was previously held, the assets of the Rotary Jar business became on that date, eo instante, the joint property of the taxpayer and his wife; that both their interests therein were present, equal, vested interests and hence that the income from such business may lawfully be reported on separate income tax returns.

Respectfully,

WILL ST. C. VOELKEL,

Attorney in Fact for James Kammerdiner

(Testimony of James A. Kammerdiner.)
Plaintiff's Exhibit No. 10—(Continued)

State of California,
County of Los Angeles—ss.

Will St. C. Voelkel, hereby duly sworn, says that he is the attorney in fact of James Kammerdiner, the taxpayer named, and that the proposed assessment of income tax for the calendar year 1928 is in his opinion wholly without sound legal basis.

He further deposes and says that to the best of his knowledge and belief the facts set out in the foregoing brief are true and correct; that this protest is not made for the purpose of securing any delay in the collection of any tax properly assessable against protestant but for the sole purpose of having all the questions raised and in any way affecting protestant's tax liability for the year 1928 carefully reviewed and determined by the Internal Revenue Agent in Charge, at Los Angeles, California or by any agency to which this protest may be referred.

WILL ST. C. VOELKEL

Subscribed and sworn to before me this 14th day of June, 1930.

M. LeSAGE,
Notary Public in and for the State and County aforesaid.

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)

Certificate

I hereby certify that the foregoing protest was prepared by me for and on behalf of said taxpayer; that the facts recited in said protest are the exact facts as given to me by the taxpayer and to the best of my knowledge and belief are true and correct.

Dated at Los Angeles, California, this 14th day of June, 1930.

WILL ST. C. VOELKEL
With Claude I. Parker
Los Angeles, California.

Office of
Internal Revenue Agent in Charge
Los Angeles Division
IT:FC

Treasury Department
Internal Revenue Service
Los Angeles, Calif.
939 South Broadway,
April 22, 1931

Mrs. James A. Kammerdiner,
c/o Claude I. Parker,
8th Floor, Bank of America Bldg.,
Los Angeles, California.

Reference is again made to your income tax liability for the year 1928 as stated in a Revenue

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)

Agent's report and to the protest of your husband, James A. Kammerdiner, against the findings.

Careful consideration has been given to your contention in conference with the result that the Conference Committee has reached decision on the issue raised, as follows:

> That since the protest of the taxpayer's husband has been conceded and the Rotary Jar business considered as having been owned jointly by the husband and wife during 1928, one-half of the income therefrom should be included in the taxpayer's gross income. The husband's salary from the Kammerdiner Cutter Corporation being community income, one-half thereof should also be included in the gross income of the taxpayer.
>
> Since the taxpayer performed services in the business and it has been held she had a joint interest in the business, 20% of the net income from the business has been allowed as earned income to the wife.

There is enclosed a recomputation of tax liability in accordance with the foregoing decision.

Since you have executed an agreement on Form 870, which waives your right of appeal to the Board of Tax Appeals and assents to the immediate assessment of the amount of tax now shown, the report has been forwarded to the Commissioner of Internal Revenue, Washington, D. C., with a recommenda-

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)

tion for closing the case on the basis above indicated.

ALF OFTEDAL
Internal Revenue Agent in
Charge

FHG/Mc
Encl: Recomputation of tax liability

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)

Mrs. James A. Kammerdiner.

Conferee's Revision

Statement of Total Tax Liability

Year	Tax Previously Assessed	Adjustments Proposed in Accompanying Report Deficiency	Overassessment	Correct Tax Liability
1928	$12,382.42	$371.86	—	$12,754.28
Total deficiency		$371.86	—	

Computation of Net Income and Tax for 1928.

Net income per Agent's report		$ 5,226.81
Add: One-half of husband's salary, community income	$ 300.00	
One-half of income from business	80,174.57	80,474.57
Corrected net income subject to surtax		$85,701.38
Less: Dividends	$ 154.29	
Personal exemption	2,150.00	2,304.29
Balance subject to normal tax		$83,397.09
Normal tax at 1½% on $4,000.00	$ 60.00	
Normal tax at 3% on 4,000.00	120.00	
Normal tax at 5% on 75,397.09	3,769.85	
Surtax on $85,701.38	8,943.26	
Total		$12,893.11
Less: Earned income credit		138.83
Total tax assessable		$12,754.28
Tax previously assessed		12,382.42
Additional tax to be assessed		$ 371.86

Computation of Earned Income Credit

One-half of the business net income	$80,174.57	
20% of income from business		$16,034.91
Less: Personal exemption		2,150.00
Balance subject to normal tax		$13,884.91

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)

Normal tax at 1½% on $4,000.00	$ 60.00	
Normal tax at 3% on 4,000.00	120.00	
Normal tax at 5% on 5,884.91	294.25	
Surtax on $16,034.91	81.05	
Total		$ 55.30
Credit allowed, 25%		$ 138.83

Office of
Internal Revenue Agent in Charge
Los Angeles Division
IT:FC

Treasury Department
Internal Revenue Service
Los Angeles, Calif.
939 South Broadway,

April 22, 1931

Mr. James A. Kammerdiner,
c/o Claude I. Parker,
8th Floor, Bank of America Bldg.,
Los Angeles, California.

Reference is again made to your income tax liability for the year 1928 as stated in a Revenue Agent's report and to your protest against the findings.

Careful consideration has been given to your contention in conference with the result that the Conference Committee has reached decision on the issue raised, as follows:

That the taxpayer's protest be conceded, the

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)

evidence tending to show that during the year 1928 the taxpayer and his wife jointly owned the Rotary Jar business and accordingly each can report one-half of the income therefrom on their separate income tax returns.

Salary from Kammerdiner Cutter Corporation is community income and one-half thereof should be included in the separate return of the taxpayer's wife.

There is enclosed a recomputation of tax liability in accordance with the foregoing decision.

Since you have executed an agreement on Form 870, which waives your right of appeal to the Board of Tax Appeals and assents to the immediate assessment of the amount of tax now shown, the report and your protest have been forwarded to the Commissioner of Internal Revenue, Washington, D. C. with a recommendation for closing the case on the basis above indicated.

ALF OFTEDAL
Internal Revenue Agent in Charge

FHG/Mc
Encl: Recomputation of tax liability

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)

James A. Kammerdiner

Conferee's Revision

Statement of Total Tax Liability

Year	Tax Previously Assessed	Adjustments Proposed in Accompanying Report Deficiency	Overassessment	Correct Tax Liability
1928	$12,543.70	$204.61	—	$12,748.31
Total deficiency		$204.61		

Computation of Net Income and Tax for 1928

Net income per Agent's report		$166,175.99
Less: One-half of salary, community income	$ 300.00	
One-half of income from business	80,174.57	80,474.57
Corrected net income subject to surtax		$ 85,701.42
Less: Dividends	$ 154.30	
Personal exemption $1350; credit for dependents—$800.	2,150.00	2,304.30
Balance subject to normal tax		$ 83,397.12
Normal tax at 1½% on $4,000.00	$ 60.00	
Normal tax at 3% on 4,000.00	120.00	
Normal tax at 5% on 75,397.12	3,769.86	
Surtax on $85,701.42	8,943.27	
Total		$ 12,893.13
Less: Earned income credit		144.82
Total tax assessable		$ 12,748.31
Tax previously assessed		12,543.70
Additional tax to be assessed		$ 204.61

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)

Computation of Earned Income Credit

One-half of income from business	$80,174.58	
20% of income from business		$ 16,034.92
One-half of salary from Kammerdiner Cutter Corporation		300.00
Total earned net income		$ 16,334.92
Less: Personal exemption and credits		2,150.00
Balance subject to normal tax		$ 14,184.92
Normal tax at 1½% on $4,000.00	$ 60.00	
Normal tax at 3% on 4,000.00	120.00	
Normal tax at 5% on 6,184.92	309.25	
Surtax on $16,334.92	90.03	
Total tax on earned income		$ 579.30
Credit allowed, 25%		$ 144.82

[Endorsed]: Filed Dec. 29, 1941.

Q. Mr. Kammerdiner, I wish you would tell us a little more in detail about the boarding house Mrs. Kammer- [115] diner ran and what part you played in that enterprise, if any.

How was it started? How did you happen to start in the boarding house enterprise?

A. I was picked out of 40 drillers down here at Salt Lake.

Q. I will ask you to speak a little louder.

A. I was picked out of 40 drillers down here at Salt Lake. That is just down——

Q. That is all right.

A. ——around Beverly there somewhere, and

(Testimony of James A. Kammerdiner.)

sent out to Brea on what we called a wildcat well. That is a new well. And the crew that was out there, they were down about 2600 feet and they had me to——

Q. (Interrupting): I don't care about that. Let's talk about the boarding house.

A. I want to get up to that.

The Court: Why is he going into this matter?

Mr. Smith: He didn't bring out the complete picture. He said it was Mrs. Kammerdiner's enterprise——

The Court: (Interrupting): I don't know if it makes any difference. I will let it go. It isn't re-direct, and I will sustain the objection that should have been made.

By Mr. Smith:

Q. Mr. Kammerdiner, did the State of California in the California Inheritance Tax subject to tax the rotary [116] jar business that we have in question here?

Mr. Mitchell: That is objected to as wholly immaterial.

The Court: Sustained as not binding on the defendant.

Mr. Smith: This was a final judgment. [117]

Mr. Smith: That is our case.

DAN O'HANLON

called as a witness by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name.

The Witness: Dan O'Hanlon.

Direct Examination

By Mr. Mitchell:

Q. Mr. O'Hanlon, do you assist tax payers in preparing tax returns? A. Yes, I do.

Q. How long have you been doing that?

A. About twenty years.

Q. Did you ever in the '20's assist Mr. and Mrs. Kammerdiner in preparing their income tax returns? [118] A. Yes, I did.

Q. Do you recall for what years?

A. Well, I looked up my records yesterday, and it was in 1925, '26, '27 and '8.

Q. 1925, '26, '27 and '8? A. Yes.

Mr. Smith: Just a minute.

May I ask on voir dire: Are you an attorney, Mr. O'Hanlon?

The Witness: No, sir.

By Mr. Mitchell:

Q. Did you ever prepare a protest in respect of taxes for the years 1925 and '26?

A. I can't remember. I probably did.

Mr. Mitchell: The Defendant offers a certified copy of protest for the years, income taxes for the

(Testimony of Dan O'Hanlon.)

years 1925 and 1926, signed "J. Kammerdiner," as the defendant's next Exhibit.

Mr. Bloom: Objected to as incompetent, irrelevant and immaterial and not bearing on any issue within this case.

Mr. Mitchell: It contains many statements as to the ownership of the property, your Honor.

The Court: All right. I will overrule the objection.

Mr. Mitchell: That will be Defendant's 17.

The Court: It will be received.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 17.") [119]

DEFENDANT'S EXHIBIT No. 17

Protest against decision of Treasury Department and additional information re Partnership of Mr. and Mrs. J. Kammerdiner, with reference to returns for 1925-1926 of Mr. J. Kammerdiner.

Name and address of taxpayer is Mr. J. Kammerdiner, of 237 S. Highland Avenue, Los Angeles, California.

The protest is made against decision as mentioned in letter dated June 12th, 1928 from Treasury Department, Internal Revenue Service, 726 S. Hill Street, and more particularly detailed in preliminary statement.

The years concerned are 1925 and 1926 and the

(Testimony of Dan O'Hanlon.)

amount of tax involved is $10,190.26, being $4220.70 for the year 1925 and $5969.56 for the year 1926.

Exception is taken to the decision disallowing a partnership between Mr. and Mrs. J. Kammerdiner, and this is the cause of the increase in tax. Charging all the income to Mr. J. Kammerdiner, whereas the income is from a Partnership between Mr. and Mrs. J. Kammerdiner, and the income should be permitted to be shown as half for Mr. J. Kammerdiner, and half for Mrs. J. Kammerdiner.

The reason taxpayer objects to disallowance of partnership basis, is due to the fact that ever since Mr. J. Kammerdiner started to work on his patent Rotary Jars, his wife, Mrs. J. Kammerdiner, has always assisted him in his work. Mrs. J. Kammerdiner has kept the books and accounts of the business ever since Mr. Kammerdiner left his work in the oilfields, and she has been consulted and questioned by Mr. Kammerdiner in connection with the business in every way. On the partnership return submitted for 1925, there appeared a statement to this effect "Both Mr. and Mrs. Kammerdiner work in the business and agreement has been made that Mrs. Kammerdiner receives vested interest in one half of the property and income, making hers separate property." This return, containing this statement, was signed and sworn to as a partnership before a Notary Public, when the return was prepared. Previous to the submission of an Income Tax Partnership return, a partnership really existed as

(Testimony of Dan O'Hanlon.)

either party could sign checks and all property was considered belonging to both parties equally. When partnership return was filed, it was filed for Income Tax purposes because a partnership between husband and wife is permitted in California as per I.T. 1744 C.B. Dec. 1923, p. 179 quoted as follows — "Returns of income from partnership between husband and wife in California. Under the provisions of section 158 of the Civil Code of California, a husband and wife may enter into a partnership in California and if there is an agreement which shows that the intention of the parties is to create a vested interest in the partnership as her separate property, such intention will change the character of their property from community to separate property. In such cases the wife is entitled to report as her separate income all amounts earned by her under such agreement." I understand that in the full ruling of I.T. 1744 the Income Tax Unit, quotes from the California case of Perkins v. Sunset Telephone and Telegraph Company, 103 Pacific Reported 190, as follows:—It will be seen, by an examination of the authority cited above, that the utmost freedom of contract exists in California between husband and wife and that the Courts will resort to circumstantial evidence furnished by the general conduct of the spouses with reference to their property in determining the existence or non-existence of a contract where the exact terms of the alleged agreement has escaped the memory of one or both of the parties to it." I believe the law will allow an oral

(Testimony of Dan O'Hanlon.)

agreement between husband and wife to stand and as there was an oral agreement between Mr. and Mrs. J. Kammerdiner to the effect that everything belonged equally to each that it was perfectly proper and correct for a partnership return to be sent in, especially in view of the fact that Mrs. Kammerdiner helped in the business, working in the office, attending to all correspondence and at various times being consulted regarding the business.

The taxpayer does not desire a hearing as he cannot say more than he has said above.

(Signed) J. KAMMERDINER.

Subscribed and sworn to before me this 3rd day of July, 1928.

[Seal] H. F. OVERBECK,

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires May 16, 1933.

The above statement was prepared by Dan O'Hanlon, of Fullerton California at the request of Mr. J. Kammerdiner.

I prepared the Income Tax Return of Mr. and Mrs. J. Kammerdiner on a partnership basis, and before doing so questioned them regarding their partnership. I was informed by each of them that everything they had was a fifty fifty proposition, that each was permitted to sign checks without signature of the other party, that Mrs. J. Kammerdiner worked in the business connected with the patent Rotary Jars, that she kept the books, accounts

(Testimony of Dan O'Hanlon.)

and took care of correspondence, and it was from her that I obtained the figures necessary to prepare the return. It was upon their instructions that I typed on the return for 1925 the following "Both Mr. and Mrs. Kammerdiner work in the business and agreement has been made that Mrs. Kammerdiner receives vested interest in one half of property."

I know from questions asked Mr. and Mrs. Kammerdiner, when preparing their return, that the statement hereby made by them is true to the best of their knowledge and belief.

Respectfully submitted,

DAN O'HANLON,

309-311-313 N. Spadra, Fullerton, California.

Subscribed and sworn to before me this 28th day of June, 1928.

C. M. BIGGS,

Notary Public in and for the County of————, State of California.

[Endorsed]: Filed Dec. 29, 1941.

By Mr. Mitchell :

Q. I hand you, Mr. O'Hanlon, a certified copy, Defendant's Exhibit 17, a certified copy of what purports to be a protest prepared by you as to in-

(Testimony of Dan O'Hanlon.)

come tax deficiencies for the years 1925 and '26, and ask you whether you recognize it?

A. That is my signature.

Q. Did you prepare this protest?

A. I must have done it.

Q. What was the information based upon, upon which this protest was drafted?

Mr. Bloom: Objected to as incompetent, irrelevant and immaterial, and not tending to prove or disprove any issue in this case.

The Court: Overruled.

By Mr. Mitchell:

Q. I mean, where did you get the information?

A. I got it from Mr. and Mrs. Kammerdiner.

Q. Did Mrs. Kammerdiner come to see you?

A. Yes, she did.

Q. I will read to you a portion of your certificate to refresh your memory: "I was informed by each of them that everything they had was a 50-50 proposition."

Did anyone make that statement to you at the time?

A. Well, I couldn't say which one it was made by, one or the other. [120]

Q. "That Mrs. J. Kammerdiner worked in the business connected with the patent rotary jars, that she kept the books, accounts, and took care of correspondence, and it was from her that I obtained the figures necessary to prepare the return."

Is that correct?

(Testimony of Dan O'Hanlon.)

A. Yes.

Q. Did she so state? A. Yes.

Q. "It was upon their instructions that I typed on the return for 1925 the following 'Both Mr. and Mrs. Kammerdiner worked in the business and agreement has been made that Mrs. Kammerdiner receives vested interest in one-half of the property and income, making hers separate property.' "

Going back to that first return for 1925, just what did either of them say to you in respect of that agreement?

A. That is a long time ago. I couldn't say definitely.

Q. In substance, Mr. O'Hanlon.

A. In substance I think Mr. Kammerdiner himself has testified that they were partners and everything was 50-50.

Q. Is that your recollection now of what they told you at that time? A. Yes, it is.

Mr. Mitchell: We offer also another protest, which is not certified, but a photostatic copy signed by J. Kammerdiner and Mrs. J. Kammerdiner. [121]

The Court: Does that relate to the same year?

Mr. Mitchell: It relates to the same year, your Honor, but it is a separate protest.

Mr. Bloom: Same objection.

The Court: The objection is overruled. It may be received in evidence.

The Clerk: 18.

(Testimony of Dan O'Hanlon.)

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 18.")

DEFENDANT'S EXHIBIT NO. 18

Protest against decision of Treasury Department and additional information re partnership of Mr. and Mrs. J. Kammerdiner, with reference to returns on partnership basis of Mr. and Mrs. J. Kammerdiner for 1925-1926.

Name and address of taxpayer, is Mr. and Mrs. J. Kammerdiner, of 237 S. Highland Avenue, Los Angeles, California, dba J. Kammerdiner.

The protest is made against decision as mentioned in letter dated Jun 12 1928 from Treasury Department, Internal Revenue Service, 728 S. Hill Street, Los Angeles, California, and more particularly detailed in summary attached to above mentioned Treasury Department letter.

The years involved are 1925 and 1926 and the amount of tax involved is as shown in protests made by Mr. and Mrs. J. Kammerdiner in their individual protests against the above referred to decision. No amount is mentioned in the partnership.

Exception is taken to the decision disallowing a partnership between Mr. and Mrs. J. Kammerdiner, and this is the cause of the increase in tax. Charging all the income to Mr. Kammerdiner makes a big increase in the amount of tax payable, and it is our

(Testimony of Dan O'Hanlon.)

contention that a partnership existed and a partnership return should be allowed to stand.

The reason we object to disallowance of partnership basis, is due to the fact that ever since the business of making and selling the patent rotary jars was started, both of us have worked in the business, Mr. Kammerdiner doing most of the outside work and Mrs. Kammerdiner doing all the inside work. Mrs. Kammerdiner has kept the books, and accounts, took care of collecting backward accounts, and conferred with and has been consulted in every way by Mr. Kammerdiner. On the partnership return submitted for 1925, there appeared a statement to this effect "Both Mr. and Mrs. Kammerdiner work in the business and agreement has been made that Mrs. Kammerdiner receives vested interest in one half of the property and income, making hers separate property." This return, containing this statement, was signed and sworn to before a Notary Public, when the return was prepared. Previous to the submission of an Income Tax return, a partnership really existed as either party could sign checks and all property was considered belonging to both parties equally, and an oral agreement was made that in view of Mrs. Kammerdiner having always been a partner and actually doing her full share of the work of the business, the business would be conducted on a partnership basis. When partnership return was filed for Income Tax purposes, it was done because a partnership between

(Testimony of Dan O'Hanlon.)

husband and wife was and is permitted in California as per I.T. 1744, C.B. Dec. 1923, p. 179 quoted as follows—"Returns of income from partnership between husband and wife in California. Under the provisions of section 158 of the Civil Code of California, a husband and wife may enter into a partnership in California and if there is an agreement which shows that the intention of the parties is to create a vested interest in the partnership as her separate property, such intention will change the character of their property from community to separate property. In such cases the wife is entitled to report as her separate income all amounts earned by her under such agreement." We understand that in the full ruling of I.T. 1744 the Income Tax Unit, quotes from the California case of Perkins v. Sunset Telephone and Telegraph Company, 103 Pacific Reporter 190, as follows, "It will be seen, by an examination of the authority cited above, that the utmost freedom of contract exists in California between husband and wife, and that the courts will resort to circumstantial evidence furnished by the general conduct of the spouses with re-reference to their property in determining the existence or non-existence of a contract where the exact terms of the alleged agreement has escaped the memory of one or both of the parties to it." We believe the law will allow an oral agreement between husband and wife to stand and as there was an oral agreement between us to the effect that everything belonged equally to

(Testimony of Dan O'Hanlon.)

each of us, it was perfectly proper and correct for a partnership return to be sent, especially in view of the fact that Mrs. Kammerdiner has worked in the business ever since it was started and assisted in the management of it.

We do not desire a personal hearing as we cannot say more than we have said above.

Protest of Mr. and Mrs. J. Kammerdiner, against decision of Treasury Department disallowing a partnership return.

(signed) J. KAMMERDINER
MRS. JAS. KAMMERDINER

Subscribed and sworn to before me this 3rd day of July 1928.

[Seal] H. F. OVERBECK

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires May 16, 1932.

The above statement was prepared by Dan O'Hanlon, of Fullerton, California, at the request of Mr. and Mrs. Kammerdiner.

I prepared the Income Tax Return (Partnership) of Mr. and Mrs. Kammerdiner for 1925 and 1926, and before doing so for 1925 questioned them regarding their partnership. I was informed by both of them that everything they had was on a fifty fifty basis, that each was permitted to sign checks without signature of the other party, that Mrs. Kammerdiner worked in the business connected with the patent Rotary Jars, that she kept

(Testimony of Dan O'Hanlon.)

the books, accounts and took care of correspondence, and generally took care of all the inside work, and it was from Mrs. Kammerdiner that I obtained the figures for the preparation of the Income Tax Return. It was upon their instructions that I typed on the return for 1925 the following "Both Mr. and Mrs. Kammerdiner work in the business and agreement has been made that Mrs. Kammerdiner receives vested interest in one half of the property and income, making hers separate property."

I know from questions asked Mr. and Mrs. J. Kammerdiner, when preparing their return, that the statement hereby made by them is true to the best of their knowledge and belief.

Respectfully submitted,

DAN O'HANLON

310-311-313 North Spadra Rd.

Fullerton, California.

June 28th 1928.

Subscribed and Sworn to before me this 28 day of June, 1928.

C. M. BIGGS

Notary Public in and for the County of Orange, State of California.

My Commission Expires December 19, 1929.

[Endorsed]: Filed Dec. 29, 1941.

(Testimony of Dan O'Hanlon.)

Mr. Mitchell: I now offer in evidence partnership returns of Mr. and Mrs. Kammerdiner for the year 1925, 1926 and 1928, certified copies.

Mr. Bloom: Objected to as incompetent, irrelevant and immaterial, tending to neither prove or disprove any issue in this case.

The Court: Overruled.

The Clerk: The first one '25 will be Government's Exhibit 19; for '26 will be 20; and for '28 will be 21.

(The documents referred to were received in evidence and marked "Defendant's Exhibits Nos. 19, 20 and 21.") [122]

DEFENDANT'S EXHIBIT NO. 19

Form 1065
U. S. Internal Revenue
(Treasury Decision)

REV. ACT 1926
ASSESSMENT

Total $

Basis Of Ver. RAR 7-10-28
Audited by C E J 7-24-28
Unit No. B-10

PARTNERSHIP RETURN OF INCOME
For Calendar Year 1925

File This Return With the Collector of Internal Revenue for Your District on or Before March 15, 1926

PRINT PLAINLY NAME AND BUSINESS ADDRESS OF PARTNERSHIP

Mr. and Mrs. J. Kammerdiner
(Name)
dba J. Kammerdiner
(Street and Number)
237 So. Highland Ave, Los Angeles, California.
(Post Office and State)

KIND OF BUSINESS Makers of Patent Rotary Jars for Air Flasks

DATE OF ORGANIZATION January 1, 1922

Do Not Write in These Spaces

File Code 206

Social Number

Examined

By

(Date Received)

6 CALIF
9-6-40
CARDED BY SOR SEC. F

Serial Number Line Consolidated No.

INCOME

1. Income from Trade or Business. (From Schedule A) Please See schedule attached $ 53.349.63
2. Interest on Bank Deposits, Notes, Mortgages, and Corporation Bonds
3. Income from other Partnerships. (State name and address)
4. Rents and Royalties. (From Schedule B)
5. Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)
6. Dividends on Stock of Domestic Corporations
7. Other Income (including dividends received on stock of foreign corporations). (State nature of income)
 (a)
 (b)
 (c)
8. Total Income in Items 1 to 7 53.349.63

U. S. BOARD OF TAX APPEALS
DIV. 8 DOCKET 41643
ADMITTED IN EVIDENCE
JUN 10 1931
PETITIONER'S EXHIBIT 1
RESPONDENT'S

1926

DEDUCTIONS

9. Losses by Fire, Storm, etc. (Explain in table on page 2) $
10. Other Deductions Authorized by Law. (Explain below or on separate sheet)
 (a)
 (b) Please see schedule attached
 (c)
11. Total Deductions in Items 9 and 10
12. Net Income (Item 8 minus Item 11) 53.349.63

PARTNERS' SHARES OF INCOME AND CREDITS
(See Instruction 12)

1. Name and Address of Each Partner	2. Per Centage of Net Income	3. Dividends (Item 6 Above)	4. Earned Income (Not Over 20% of Net Profits)	5. Balance of Net Income (Item 12 Minus Sum of Amounts in Columns 3 and 4)	6. Capital Net Gain or Loss (Schedule D, Column 9)	Income Tax Paid at Source on Tax Free Covenant Bonds	Credit for Tax Paid Foreign Country
(a) Mr. J. Kammerdiner	50	$	$	$ 26,674.81			Cred 302.47
(b) Mrs. J. Kammerdiner	50			26,674.82			
(c)				53,349.63			
(d)							
(e)							
(f)							
(g)							
(h)							
(i)							
(j) Totals		$	$	$	$	$	$

NONTAXABLE OBLIGATIONS, LIBERTY BONDS, ETC.

1. Obligations or Securities	2. Amount Owned	3. Interest Received
(a) Obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia	$	
(b) Securities issued under the provisions of the Federal Farm Loan Act, or under such Act as amended		
(c) Liberty 3½% Bonds and other obligations of United States issued before Sept. 1, 1917, and obligations of United States possessions		
(d) Liberty 4% and 4½% Bonds and other obligations of the United States issued after September 1, 1917		

1-/

SCHEDULE A—INCOME FROM TRADE OR BUSINESS (See Instruction 1)

1. Total receipts from trade or business $

Cost of Goods Sold

2. Labor $
3. Material and supplies
4. Merchandise bought for sale
5. Other costs (itemize below or on separate sheet)
6. Plus inventory at beginning of year
7. Total (Lines 2 to 6, inclusive) $
8. Less inventory at end of year
9. Net Cost of Goods Sold (Line 7 minus Line 8) $

Other Business Deductions

10. Salaries, exclusive of "Labor" reported on Line 2, and exclusive of partners' salaries $
11. Interest on business indebtedness to others
12. Taxes on business and business property
13. Losses by fire, storm, etc. (explain in table provided therefor at foot of page)
14. Bad debts arising from sales or professional services
15. Depreciation, obsolescence, and depletion (explain in table provided therefor at foot of page)
16. Rent, repairs, and other expenses (itemize below or on separate sheet)
17. Total (Lines 10 to 16, inclusive) $
18. Total Deductions (Line 9 plus Line 17) $
19. Net Profits (Line 1 minus Line 18) (Enter as Item 1) $

Explanation of deductions claimed on Lines 5 and 16

SCHEDULE B—INCOME FROM RENTS AND ROYALTIES (See Instruction 4)

1. Kind of Property	2. Amount Received	3. Cost	4. Value as of March 1, 1913	5. Depreciation (Explain in table at foot of page)	6. Repairs	7. Other Expenses (Itemize Below)	8. Net Profit (Enter as Item 4)
	$	$	$	$	$	$	$

Explanation of deductions claimed in Column 7

SCHEDULE C—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 5)

1. Kind of Property	2. Date Acquired	3. Amount Received	4. Depreciation Previously Allowed	5. Cost	6. Value as of March 1, 1913	7. Subsequent Improvements	8. Net Profit (Enter as Item 5)
		$	$	$	$	$	$

State how property was acquired

SCHEDULE D—CAPITAL NET GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (See Instruction 5a)

1. Kind of Property	2. Date Acquired	3. Date Sold	4. Amount Received	5. Depreciation Previously Allowed	6. Cost	7. Value as of March 1, 1913	8. Subsequent Improvements, and Capital Deductions	9. Net Gain (Enter in Column 6, Item 12)
	Mo. Day Year	Mo. Day Year	$	$	$	$	$	$

State how property was acquired

EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC., CLAIMED IN SCHEDULE A AND IN ITEM 9

1. Kind of Property	2. Date Acquired	3. Cost	4. Value as of March 1, 1913	5. Subsequent Improvements	6. Depreciation Previously Allowed	7. Insurance and Salvage Value	8. Deductible Loss
		$	$	$	$	$	$

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B

1. Kind of Property (If buildings, state material of which constructed)	2. Date Acquired	3. Age When Acquired	4. Probable Life After Acquirement	5. Cost	6. Value as of March 1, 1913	Amount of Depreciation Charged Off	
						7. Previous years	8. This year
				$	$	$	$

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements (if any), has been examined by me, and, to the best of my knowledge and belief, is a true and complete return made in good faith for the accounting period as stated, pursuant to the Revenue Act of 1924 and the Regulations issued under authority thereof.

Mr. and Mrs. J. Kammerdiner, dba J. Kamerdi

Sworn to and subscribed before me this 13th day of March, 1926

Notary Public.

Mrs J Kammerdiner

(Signature of taxpayer)

(Title)

(Address of partner)

(Address of taxpayer)

(If amended return, must be plainly marked "Amended" across face of return)

A-2

(Testimony of Dan O'Hanlon.)

Both Mrs. and Mr. Kammerdiner work in the business and agreement has been made that Mrs. Kammerdiner receives vested interest in one half of property and income, making hers separate property. √

[Endorsed]: Filed Dec. 29, 1941.

PETITIONER'S EXHIBIT NO. 20

Form 1065
U. S. Treasury Department
Internal Revenue Service

PARTNERSHIP RETURN OF INCOME
For Calendar Year 1926

File This Return With the Collector of Internal Revenue for Your District on or Before March 15, 1927

PRINT PLAINLY NAME AND BUSINESS ADDRESS OF PARTNERSHIP

Mr. and Mrs. J. Kammerdiner
(Name)

dba J. Kammerdiner
(Name and Number)

557 So. Highland Avenue, Los Angeles, California.
(Post office and State)

KIND OF BUSINESS Makers of Patent Rotary Jars for Oilfields

DATE OF ORGANIZATION January 1 1925.

Tax
Penalty
Interest
Total $

Bank CK'er RAR 3-10-28
Audited by C.E.G. 7-24-28
Unit No. B-10
LIST
Page Line

Do Not Write in These Spaces

File No. 206
Serial Number 979532

RECEIVED
MAR 15 1927
COLLECTOR OF INT. REV.
6th DISTRICT OF CAL.

Checked
Audited

U. S. BOARD OF TAX APPEALS
DIV. 8 DOCKET 47643
ADMITTED IN EVIDENCE
JUN 10 1931
PETITIONER'S EXHIBIT 20
RESPONDENT'S

6 Cal
9-31-32
CARDED BY [illegible]

JUN 14 1927

INCOME

1. Income from Trade or Business. (From Schedule A)	Please see schedule attached	$ 66,593.10
2. Interest on Bank Deposits, Notes, Mortgages, and Corporation Bonds		13.59
3. Income from other Partnerships. (State name and address)		
4. Rents and Royalties. (From Schedule B)		
5. Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)		
6. Dividends on Stock of Domestic Corporations		737.50
7. Other Income (including dividends received on stock of foreign corporations). (State nature of income)		
(a)		
(b)		
(c)		
8. TOTAL INCOME IN ITEMS 1 TO 7		$ 67,344.27

DEDUCTIONS

9. Losses by Fire, Storm, etc. (Explain in table on page 2)	$	
10. Other Deductions Authorized by Law. (Explain below or on separate sheet)		
(a)		
(b)		
(c) City & County Taxes paid not included in above	796.59	
11. TOTAL DEDUCTIONS IN ITEMS 9 AND 10		$ 796.59
12. NET INCOME (Item 8 minus Item 11)	1,654765	$ 67,547.68

13. PARTNERS' SHARES OF INCOME AND CREDITS
(See Instruction 13)

1,664765

1. NAME AND ADDRESS OF EACH PARTNER	2. PERCENTAGE OF NET INCOME	3. INTEREST (ITEM 2 ABOVE)	4. EARNED INCOME (NOT OVER 20% OF NET PROFITS)	5. BALANCE OF NET INCOME (ITEM 12 MINUS SUM OF AMOUNTS IN COLUMNS 3 AND 4)	6. CAPITAL NET GAIN OR LOSS (SCHEDULE D, COLUMN 8)	7. INCOME TAX PAID AT SOURCE OR TAX-FREE COVENANT BONDS	8. INCOME AND PROFITS TAXES PAID FOREIGN COUNTRIES OR UNITED STATES POSSESSIONS
(a) Mr. J. Kammerdiner	50	$ 368.75	$ 6681.01	$ 26724.08	$?	$	$
(b) Mrs. J. Kammerdiner	50	368.75	6681.01	26724.08			
(c)							
(d)							
(e)							
(f)							
(g)							
(h)							
(i)							
(j) TOTALS		$ 737.50	$ 13362.02	$ 53448.16	$	$	$

14. NONTAXABLE OBLIGATIONS, LIBERTY BONDS, ETC.

1. OBLIGATIONS OR SECURITIES	2. AMOUNT OWNED	3. INTEREST RECEIVED
(a) Obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia	$	$
(b) Securities issued under the provisions of the Federal Farm Loan Act, or under such Act as amended		
(c) Liberty 3½% Bonds and other obligations of United States issued before Sept. 1, 1917, and obligations of United States possessions		
(d) Liberty 4% and 4½% Bonds and other obligations of the United States issued after September 1, 1917		

D—14284

SCHEDULE A—INCOME FROM TRADE OR BUSINESS (See Instruction 1)

1. Total receipts from trade or business			$
Cost of Goods Sold		Other Business Deductions	
2. Labor	$	10. Salaries, exclusive of "Labor" reported on Line 2, and exclusive of compensation for partners	$
3. Material and supplies		11. Interest on business indebtedness to others	
4. Merchandise bought for sale		12. Taxes on business and business property	
5. Other costs (Itemize below or on separate sheet)		13. Losses by fire, storm, etc. (explain in table provided therefor at foot of page)	
6. Plus inventory at beginning of year		14. Bad debts arising from sales or professional services	
7. Total (Lines 2 to 6, inclusive)	$	15. Depreciation, obsolescence, and depletion (explain in table provided therefor at foot of page)	
8. Less inventory at end of year		16. Rent, repairs, and other expenses (Itemize below or on separate sheet)	
9. Net Cost of Goods Sold (Line 7 minus Line 8)	$	17. Total (Lines 10 to 16, inclusive)	$
		18. Total Deductions (Line 9 plus Line 17)	$
		19. Net Profits (Line 1 minus Line 18) (Enter as Item 1)	$

Explanation of deductions claimed on Lines 5 and 16

SCHEDULE B—INCOME FROM RENTS AND ROYALTIES (See Instruction 4)

1. Kind of Property	2. Amount Received	3. Cost	4. Value as of March 1, 1913	5. Depreciation (Explain in table at foot of page)	6. Repairs	7. Other Expenses (Itemize below)	8. Net Profit (Enter as Item
	$	$	$	$	$	$	$

Explanation of deductions claimed in Column 7

SCHEDULE C—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 5)

1. Kind of Property	2. Date Acquired	3. Amount Received	4. Depreciation Allowable Since Acquisition	5. Cost	6. Value as of March 1, 1913	7. Subsequent Improvements	8. Net Profit (Enter as Item
		$	$	$	$	$	$

State how property was acquired

SCHEDULE D—CAPITAL NET GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (See Instruction 5a)

1. Kind of Property	2. Date Acquired	3. Date Sold	4. Amount Received	5. Depreciation Allowable Since Acquisition	6. Cost	7. Value as of March 1, 1913	8. Subsequent Improvements and Capital Expenditures	9. Net Gain (Enter in Colu Item 1
	Mo. Day Year	Mo. Day Year	$	$	$	$	$	$

State how property was acquired

EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC., CLAIMED IN SCHEDULE A AND IN ITEM 9

1. Kind of Property	2. Date Acquired	3. Cost	4. Value as of March 1, 1913	5. Subsequent Improvements	6. Depreciation Allowable Since Acquisition	7. Insurance and Salvage Value	8. Deductible
		$	$	$	$	$	$

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B

1. Kind of Property (If buildings, state material of which constructed)	2. Date Acquired	3. Age When Acquired	4. Probable Life After Acquirement	5. Cost	6. Value as of March 1, 1913	Amount of Depreciation Claimed	
						7. Previous years	8. This ye
				$	$	$	$

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements (if any), has been examined by me, and, to the best of my knowledge and b is a true and complete return made in good faith for the accounting period as stated, pursuant to the Revenue Act of 1926 and the Regulations issued under authority th

Sworn to and subscribed before me this 11 day of March 1927

Dan Hanlon (Signature of officer administering oath)

Notary Public (Title)

J Kammerdiner (Member of partnership)

(Address of partner)

(An amended return must be plainly marked "Amended" across face of return)

(Testimony of Dan O'Hanlon.)

1926 INCOME TAX RETURN OF PARTNERSHIP OF MR. AND MRS. J. KAMMERDINER, DBA J. KAMMERDINER, OF LOS ANGELES, CALIFORNIA.

Received for rentals of Rotary Jars			50,431.41
Mid-Continent Royalties			1,312.50
San Joaquin Valley Royalties			3,345.00
Foreign Sales			63,928.99
Profit from Assemblies			844.53
			119,862.43√
Cost of jars, cartage, freight, traveling expenses (hotels, etc.) entertaining clients, and advertising		40,249.89	
Salary and Commissions, paid		9,525.00	
Loss on Scanlon jars—			
Cost and expense	916.75		
Royalty paid	90.00		
	1,006.75		
Rent and Sale	850.00	156.75	49,931.64√
			69,930.79√
Auto Expenses (Business auto)			
Gas, oil, tires, repairs		1,155.81	
Depreciation		1,305.00	2,460.81√
			67,469.98√
House 4861 Clinton Street(			
Rents received		405.00	
Repairs, taxes, etc.	273.75		
4% on $3500.00—			
Depreen	140.00		
	413.75	Loss	8.75
			67,461.23

(Testimony of Dan O'Hanlon.)

Rental 2½ acres Main Street.....	132.50	
Taxes and repairs.....	94.21	38.29
		67,499.52√
Taxes on investments—		
25 acre ranch, Int. and taxes	172.20	
Barnes City, ½ acre.....	15.66	
Taxes on Athens lot.....	1.86	
Lots on Manhatten Street.....	316.26	
St. Andrews Lot & House....	234.51	
Whittier Boulevard Lot.....	164.85	,905.34√
		66,594.18√

Half to Mr. J. Kammerdiner.....33,296.59
Half to Mrs. J. Kammerdiner.....33,296.59

As explained in last year's report, both Mrs. Kammerdiner and Mr. Kammerdiner work in the business and agreement has been made that Mrs. Kammerdiner receives vested interest in one half of property and income, making hers separate property.

[Endorsed]: Filed Dec. 29, 1941.

DEFENDANT'S EXHIBIT NO. 21

Form 1065
U. S. Internal Revenue
(Auditor's Stamp)

PARTNERSHIP RETURN OF INCOME
For Calendar Year 1928

File This Return With the Collector of Internal Revenue for Your District on or Before March 15, 1929

PRINT PLAINLY NAME AND BUSINESS ADDRESS OF PARTNERSHIP

Mr. and Mrs. J. Kammerdiner, dba J. Kammerdiner.
(Name)

237 Highland Avenue, Los Angeles, Calif..
(Street and Number)

Makers of patent rotary jars for oil fields.
(Post office and State)

Kind of Business

Date of Organization January 1st 1925.

Do Not Write in These Spaces

File Code 206

Serial Number 9755 775

(Date Received)
RECEIVED
MAR 15 1929

Audited
As 6-Calif CAL

4/25/31
HBR 7/13 31
E-1

Item and Instruction No.

	GROSS INCOME		
1.	Gross Receipts from Business or Profession — Please see schedule attached	$230,860.55	
2.	Less Cost of Goods Sold:		
	(a) Inventory at beginning of year	$	
	(b) Merchandise bought for sale		
	(c) Cost of labor, supplies, etc. (From Schedule A)		
	(d) Total of Lines (a), (b), and (c)	$	
	(e) Less inventory at end of year — Please see schedule attached	91,573.58	
3.	Gross Profit from Business or Profession (Item 1 minus Item 2)	$139,286.97	
4.	Income from Other Partnerships (State name and address)		
	Joint a/c Kammerdiner and wife, E. Ewart, [illegible] and Wm. Kammerer.	1,435.46	
5.	Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest upon which a tax was paid at source)	3,511.31	
6.	Interest on Tax-free Covenant Bonds upon which a Tax was Paid at Source		
7.	Rents — Please see schedule attached	174.59	
8.	Royalties		
9.	Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule B)	6,355.71	
10.	Dividends on Stock of Domestic Corporations	309.56	
11.	Other Income (including dividends on stock of foreign corporations). (State nature of income)		
12.	TOTAL INCOME IN ITEMS 3 TO 11		$170,572.60
	DEDUCTIONS		
13.	Salaries of Employees (Do not include compensation for partners)	$	
14.	Rent on Business Property		
15.	Repairs (From Schedule D)		
16.	Interest on Indebtedness		
17.	Taxes on Business Property (From Schedule E) — City & County (Cal. [illegible] included	1,755.40	
18.	Losses by Fire, Storm, etc. (From Schedule F)		
19.	Bad Debts (From Schedule G)		
20.	Depreciation, Obsolescence, and Depletion (From Schedule H)		
21.	Other Deductions Authorized by Law. (Explain below or on separate sheet)		
22.	TOTAL DEDUCTIONS IN ITEMS 13 TO 21		$1,755.40
23.	NET INCOME (Item 12 minus Item 22)		$168,817.20

PARTNERS' SHARES OF INCOME AND CREDITS
(See Instruction 25)

	1. NAME AND ADDRESS OF EACH PARTNER	2. PERCENTAGE OF NET INCOME	3. DIVIDENDS (ITEM 10 ABOVE)	4. EARNED INCOME	5. BALANCE OF NET INCOME (ITEM 23 MINUS SUM OF AMOUNTS IN COLUMNS 3 AND 4)	6. CAPITAL NET GAIN OR LOSS (SCHEDULE C, COLUMN D)	7. INCOME TAX PAID AT SOURCE (5% OF ITEM 6)	8. INCOME PROFITS TAX PAID FOR COUNTRIES UNITED STATES POSSESSIONS
(a)	Mr. J. Kammerdiner.							
(b)	237 Highland Avenue,	50%	154.30	16,850.86	67,403.44			
(c)	Los Angeles, Calif..							
(d)	Mrs. J. Kammerdiner	50%	154.29	16,850.86	67,403.45			
(e)	237 Highland Avenue,							
(f)	Los Angeles, Calif..							
(g)								
(h)								
(i)								
(j)	TOTALS							

U. S. GOVERNMENT PRINTING OFFICE 9—31008

SCHEDULE A—INCOME FROM BUSINESS OR PROFESSION (See Instruction 2)

1. Total receipts from business or profession (state kind of business) $

Cost of Goods Sold

2. Labor $
3. Material and supplies
4. Merchandise bought for sale
5. Other costs (itemize below or on separate sheet)
6. Plus inventory at beginning of year
7. Total (Lines 2 to 6, inclusive) $
8. Less inventory at end of year
9. Net Cost of Goods Sold (Line 7 minus Line 8) $

Other Business Deductions

10. Salaries, exclusive of "Labor," reported on Line 2, and compensation for your own services $
11. Interest on business indebtedness to others
12. Taxes on business and business property
13. Losses by fire, storm, etc. (explain in table provided therefor at foot of page)
14. Bad debts arising from sales
15. Depreciation, obsolescence, and depletion (explain in table provided therefor at foot of page)
16. Rent, repairs, and other expenses (itemized below or on separate sheet)
17. Total (Lines 10 to 16, inclusive) $
18. Total Deductions (Line 9 plus Line 17) $
19. Net Income (Line 1 minus Line 18) (Enter as Item 2) $

Explanation of deductions claimed on Lines 5 and 16

SCHEDULE B—INCOME FROM RENTS AND ROYALTIES (See Instruction 5)

1. Kind of Property	2. Amount Received	3. Cost	4. Value as of March 1, 1913	5. Depreciation (Explain in table at foot of page)	6. Repairs	7. Other Expenses (Itemize below)	8. Net Income (Enter as Item 3)
	$	$	$	$	$	$	$

Explanation of deductions claimed in Column 7

SCHEDULE C—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 6)

1. Kind of Property	2. Date Acquired	3. Amount Received	4. Depreciation Previously Allowed	5. Cost	6. Value as of March 1, 1913	7. Subsequent Improvements	8. Net Profit (Enter as Item 6)
		$	$	$	$	$	$

State how property was acquired

SCHEDULE D—CAPITAL NET GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (See Instruction 6a)

1. Kind of Property	2. Date Acquired	3. Date Sold	4. Amount Received	5. Depreciation Previously Allowed	6. Cost	7. Value as of March 1, 1913	8. Subsequent Improvements and Capital Deductions	9. Net Gain or Loss (Enter 12½% as Item C)
	Mo. Day Year	Mo. Day Year						
			$	$	$	$	$	$

State how property was acquired

SCHEDULE E—INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES (See Instruction 8)

1. Obligations or Securities	2. Interest Received or Accrued	3. Amount Owned	4. Principal Amount Exempt From Taxation	5. Amount Owned in Excess of Exemptions	6. Interest on Amount in Excess of Exemptions (Enter as Item 4)
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia	$	$	All	XXXXXX	XXXXXX
(b) Securities issued under Federal Farm Loan Act, or under such Act as amended			All	XXXXXX	XXXXXX
(c) Liberty 3½% Bonds and other obligations of United States issued before Sept. 1, 1917, and obligations of possessions of the United States			All	XXXXXX	XXXXXX
(d) Liberty 4% and 4¼% Bonds, Treasury 4¼% Bonds, Treasury Certificates, and Treasury (War) Savings Certificates			$5,000	$	$
(e) Liberty 4% and 4¼% Bonds			$50,000		
(f) Treasury Notes			None		

EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC., CLAIMED IN SCHEDULE A, AND IN ITEM 13

1. Kind of Property	2. Date Acquired	3. Cost	4. Value as of March 1, 1913	5. Subsequent Improvements	6. Depreciation Previously Allowed	7. Insurance and Salvage Value	8. Net Loss (Enter as Item 13)
		$	$	$	$	$	$

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B

1. Kind of Property (If buildings, state material of which constructed)	2. Date Acquired	3. Age When Acquired	4. Probable Life After Acquirement	5. Cost	6. Value as of March 1, 1913	Amount of Depreciation Charged Off	
						7. Previous years	8. This year
				$	$	$	$

SCHEDULE F—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 12, 14, AND 15

.....

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements (if any), has been examined by me, and, to the best of my knowledge and belief is a true and complete return made in good faith for the taxable year as stated, pursuant to the Revenue Act of 1924 and the Regulations issued under authority thereof.

(If return is made by agent, the reason therefor must be stated on this line)

Sworn to and subscribed before me this 13 day of March, 1925

Mrs J Hammerdinger
(Signature of individual or agent)

Notary Public.

(Signature of officer administering oath)

(Address of individual or agent)

[Endorsed]: Filed Dec. 29, 1941.

1928 INCOME TAX RETURN OF PARTNERSHIP OF MR. AND MRS. J. KAMMERDINER, DBA J. KAMMERDINER, OF LOS ANGELES, CALIF.

Both Mr. and Mrs. Kammerdiner work in the business and agreement had been made that Mrs. Kammerdiner receives vested interest in one-half of the property and income, making hers separate property and income. This is the fourth year return has been made on Partnership basis.

Income:—

Cash received on rentals		127,120.17√	
foreign sales		115,159.00√	
Mid-Continent ~~royalties~~ rentals		1,162.50√	
San Jouquin Valley ~~royalties~~ rentals		3,790.54√	
Wyoming and Montana ~~royalties~~ rentals		706.92√	
Rentals ~~Royalties~~ on assemblies		1,598.00√	
Ranch at Olive	2,592.74		
Labor, taxes, etc	1,109.32		
Depreciation	160.00		
	1,269.32	1,323.42	
		250,860.55	
		1,323.42*	
			249,537.13*

1928 Income Tax Return of Partnership of Mr. and Mrs. J. Kammerdiner, dba J. Kammerdiner, of Los Angeles, Calif.—(Continued)

Expenses:—				
Cash paid for Manufacturing & Repairs		65,189.62√		
for general expenses, advertising, etc		6,973.63		
A. C. Baimbridge, Com. & Exs		16,475.00√		
Auto exs, gas, oil, repairs		1,011.17√		
Auto Depreen. 25% on 4800.00 for 11⅔ months		1,166.66√		
Loss on sale of auto	5220.00			
Depreen taken	3262.50			
	1957.50			
Allowed Jan. 9, 1928	1200.00	757.50√		
			91,573.58	89,187.98*
			2,385.60*	
Carried to return Business			$159,286.97	160,349.15*
Income from rentals—				
2½ acres Main St. Rent		37.50		
Taxes		65.68	—28.18 Loss	

1928 Income Tax Return of Partnership of Mr. and Mrs. J. Kammerdiner, dba J. Kammerdiner, of Los Angeles, Calif.—(Continued)

4861 Clinton St.	Rent	440.00		
	Taxes, repairs, water 96.50			
	Deprecn.....4% 2500.....100.00			
		196.50		243.50 Gain
25 acre Ranch at Olinda				
	Taxes	61.56		
	Rent recd	20.83	—40.73	
			68.91	243.50
				68.91
	Carried to return.....Rentals.....			$174.59

*[Printer's Note]: Indicates figures penciled in typewritten sheet.

[Endorsed]: Filed Dec. 29, 1941.

(Testimony of Dan O'Hanlon.)

Q. I hand you certified copy of partnership return of income for the calendar year 1925, taxpayers "Mr. and Mrs. J. Kammerdiner dba J. Kammerdiner," and ask whether you made that partnership return for the year 1925.

A. Yes, I did.

Q. And who asked you to make it that year?

A. Well, I believe they came together every time they came.

Q. It is signed by Mrs. J. Kammerdiner. There is "Mr. and Mrs. J. Kammerdiner, dba J. Kammerdiner" in typewriting and then below it is signed "Mrs. J. Kammerdiner."

A. Mrs. Kammerdiner always brought the figures down.

Q. Mrs. Kammerdiner you say? A. Yes.

Q. Then defendant's Exhibit 20, the partnership return of income for the calendar year of 1926, "Mr. and Mrs. J. Kammerdiner dba J. Kammerdiner." Do you know why you included the income from the Clinton Street property and the Main Street property as a part of the partnership return for 1926; do you remember that?

Mr. Bloom: Objected to as incompetent, irrelevant and immaterial.

The Court: Overruled. [123]

The Witness: Well, all the information on the returns I get from the taxpayers themselves.

By Mr. Mitchell:

Q. Was that given to you by Mr. or Mrs. Kammerdiner? A. Mrs. Kammerdiner.

(Testimony of Dan O'Hanlon.)

Q. Now the 1928 partnership return, this is defendant's Exhibit 21, partnership return of income for the calendar year of 1928, "Mr. and Mrs. J. Kammerdiner, dba J. Kammerdiner." I will ask you whether you recall making out this return for the taxpayers.

A. Yes. That is my signature here.

Q. You notarized it? A. Yes.

Q. That was made out in what year? It is dated February, 1929.

A. Well, of course, all the taxes—income tax returns are made out between the 1st of January and the 15th of March.

Q. And they are for the previous calendar year?

A. Yes. [124]

Q. Did they mention to you their joint tenancy agreement, so-called, of 1928?

A. I couldn't remember that. I don't remember that.

Q. You don't recall that? A. No, sir.

Mr. Mitchell: I now offer in evidence a certified copy of the individual income tax return of Mr. Kammerdiner for the year 1925.

The Court: All right. It will be received.

Mr. Mitchell: Also Mr. Kammerdiner for the year 1925. These might be introduced as a single Exhibit.

The Court: All right.

Mr. Mitchell: And then perhaps they can be fastened together. [125]

(Testimony of Dan O'Hanlon.)

I offer a group of individual income tax returns, one for Mrs. Kammerdiner for the year 1925; one for——

The Court: I think you had better make them separate Exhibits, it would be easier to handle.

Mr. Mitchell: That one will be marked defendant's Exhibit 22.

The Clerk: What is the date of it?

Mr. Mitchell: The year 1925.

The Clerk: That will be 22.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 22.")

DEFENDANT'S EXHIBIT NO. 22

Form 1040
U. S. Internal Revenue
(Auditor's Stamp)

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES OF MORE THAN $5,000

OR NET INCOMES, REGARDLESS OF AMOUNT, IF DERIVED FROM A PROFESSION OR BUSINESS, INCLUDING FARMING

For Calendar Year 1924

If Your Income is Computed on a Fiscal Year Basis, or Income is Received from a Partnership or Fiduciary Computed on a Fiscal Year Basis, Form 1040FY Should be Secured from the Collector and Filed in Lieu of This Form

(FILE AGENT FOR THIS CAMPUS) RECEIVED JUL 31 1926 SAN FRANCISCO

File This Return with the Collector of Internal Revenue for Your District on or Before March 15, 1925
(PRINT NAME AND ADDRESS PLAINLY BELOW)

Mrs. J. Kammerdiner (30)3471
(Name)
237 South Highland Avenue
(Street and number, or rural route)
Los Angeles, Los Angeles, California.
(Post office) (County) (State)

Do Not Write in Space Below

Cash Check M. O. Cert. of Ind.

OCCUPATION, PROFESSION, OR KIND OF BUSINESS Partner in Rotary Jar Business (Oil Field Patent).

1. Are you a citizen or resident of the United States? Yes
2. If you filed a return for 1923, to what Collector's office was it sent? --
3. Is this a joint return of husband and wife? No
4. Were you married and living with husband or CLAIMED REBATED of your taxable year? Yes
5. If not, were you on the last day of your taxable year supporting one or more persons living in your household who are closely related to you by blood, marriage, or adoption?
6. If your status in respect to questions 4 and 5 changed during year, state date of such change
7. How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support because mentally or physically defective were receiving their chief support from you on the last day of your taxable year? Three

INCOME

	Amount received	Expenses paid (Explain in Schedule F)
1. Salaries, Wages, Commissions, etc. (State name and address of employer from whom received)	$2700.00 taken by husband.	$
R. A. RATTO, TOLEDO, OHIO		
2. Income from Business or Profession. (From Schedule A)		
3. Interest on Bank Deposits, Corporation Bonds, etc. (except interest upon which a tax was paid at source)		
(a) Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source		
4. Income from Partnerships, Fiduciaries, etc. (State name and address of partnership, etc.)		
Mr. and Mrs. J. Kammerdiner, dba J. Kammerdiner, Los Angeles, Calif.	26,674.82	
5. Profits and Royalties. (From Schedule D)		
6. Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)		
7. Dividends on Stock of Domestic Corporations	289.41	
8. Taxable Interest on Liberty Bonds, etc. (From Schedule E)		
9. Other Income (including dividends received on stock of foreign corporations). (State nature of income)		
(a)		
(b)		
(c)		
(d) TOTAL INCOME IN ITEMS 1 TO 9		$ 26,674.82 289.41

U.S. BOARD OF TAX APPEALS DIV. 8 DOCKET 41643 FILED JUN 10 1931 PETITIONER'S EXHIBIT Z

DEDUCTIONS

11. Interest Paid	$
12. Taxes Paid. (Explain in Schedule F)	
13. Losses by Fire, Storm, etc. (Explain in Table on page 2)	
14. Bad Debts. (Explain in Schedule F)	
15. Contributions. (Explain in Schedule F) Church of Christ Scientist	150.00
16. Other Deductions Authorized by Law. (Explain below or on separate sheet)	
(a)	
(b)	
(c)	
17. TOTAL DEDUCTIONS IN ITEMS 11 TO 16	$ 150.00
18. NET INCOME (Item 10 minus Item 17)	26,524.82 289.41

COMPUTATION OF TAX (See Instruction 22 as revised)

19. Earned Net Income not over $20,000	$ 5000.00	30. Net Income (Item 18 on return)	26,814.23	41. Normal Tax (1½% of Item 37)	$ 60.00
20. Less Personal Exemption and Credit for Dependents	2000.00	31. Less Dividends (Item 7 on return) $289.41		42. Normal Tax (3% of Item 39)	120.00
21. Balance (Item 19 minus 20)	$ 3000.00	32. Interest on Liberty Bonds, etc. (Item 8)		43. Normal Tax (5% of Item 40)	826.24
22. Amount taxable at 1½% (not over the first $4,000 of Item 21)	3000.00	33. Personal Exemption	2000.00	44. Surtax on Item 18 (see Instruction 22 as revised)	637.00
23. Amount taxable at 3% (not over the second $4000 of Item 21)		34. Credit for Dependents	2,289.41	44a. Tax on Net Income (total of Items 41, 42, 43, and 44)	$ 1643.24
24. Amount taxable at 5% (balance over $8,000 of Item 21)		35. Total of Items 31, 32, 33, and 34		45. Adjustment for Capital Gain or Loss (12½% of Column 9, Schedule D)	
25. Normal Tax (1½% of Item 22)	$ 45.00	36. Balance (Item 30 minus 35)	24,524.82	46. Total of or difference between Items 44a and 45	$
26. Normal Tax (3% of Item 23)		37. Amount taxable at 1½% (not over the first $4,000 of Item 36)	4,000.00	47. Less Credit of 25% of Tax on Earned Net Income (Item 29)	11.25
27. Normal Tax (5% of Item 24)		38. Balance (Item 36 minus 37)	20,524.82	48. Total Tax (Item 46 minus 47)	$ 1631.99
28. Surtax on Item 19		39. Amount taxable at 3% (not over the second $4,000 of Item 36)	4,000.00	49. Less Income Tax paid at source (2% of Item 3a)	
28a. Tax on Earned Net Income (total of Items 25, 26, 27, and 28)	$	40. Amount taxable at 5% (balance over $8,000 of Item 36)	16,524.82	50. Income and Profits Taxes paid to a foreign country or U. S. possession	
29. Credit of 25% of Item 28a (not over 25% of Items 28, 41, 42 and 43)	$ 11.25			51. Balance of Tax (Item 48 minus Items 49 and 50)	$ 1631.99

NOTE 3. The above Instructions and Computation of Tax are revised

BY [illegible]

SCHEDULE A—COST OF LABOR, SUPPLIES, ETC. (See Instruction 2)

Items	Amount	Items	Amount (Enter as Item 2c)
Labor	$		$
Supplies			

SCHEDULE B—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 9)

1. Kind of Property	2. Date Acquired	3. Amount Received	4. Depreciation Allowable Since Acquisition	5. Cost	6. Value as of March 1, 1913	7. Subsequent Improvements	8. Net Profit (Enter as Item 9)
San Martinez Stock	1928	$21,573.64	$	$15,258.54	$	$	$6,115.10
Sun Park Oil Co.		240.64		300.00		Loss	59.36
						Gain	6,055.74

State how property was acquired by purchase for cash.

SCHEDULE C—CAPITAL NET GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (See Instruction 9a)

1. Kind of Property	2. Date Acquired	3. Date Sold	4. Amount Received	5. Depreciation Allowable Since Acquisition	6. Cost	7. Value as of March 1, 1913	8. Subsequent Improvements, and Capital Deductions	9. Net Gain (Enter in Column 6, of table on page 1)
	Mo. Day Year	Mo. Day Year	$	$	$	$	$	$

State how property was acquired.

SCHEDULE D—COST OF REPAIRS (See Instruction 15)

1. Items	2. Amount (Enter as Item 15)
	$

SCHEDULE E—TAXES PAID (See Instruction 17)

1. Items	2. Amount (Enter as Item 17)
	$

SCHEDULE F—EXPLANATION OF LOSSES BY FIRE, STORM, ETC. (See Instruction 18)

1. Kind of Property	2. Date Acquired	3. Cost	4. Value as of March 1, 1913	5. Subsequent Improvements	6. Depreciation Allowable Since Acquisition	7. Insurance and Salvage Value	8. Deductible Loss (Enter as Item 18)
		$	$	$	$	$	$

State how property was acquired.

SCHEDULE G—EXPLANATION OF DEDUCTION FOR BAD DEBTS (See Instruction 19)

	Year	Charged on Acct.	Bad Debts
(a)	1925	$	$
(b)	1926		
(c)	1927		
(d)	1928		

SCHEDULE H—EXPLANATION OF DEDUCTION FOR DEPRECIATION (See Instruction 20)

1. Kind of Property (If buildings, state material of which constructed)	2. Date Acquired	3. Age When Acquired	4. Probable Life After Acquirement	5. Cost (Exclusive of Land)	6. Value as of March 1, 1913 (Exclusive of Land)	Amount of Depreciation Charged Off 7. Previous years	8. This year
				$	$	$	$

SCHEDULE I—NONTAXABLE OBLIGATIONS, LIBERTY BONDS, ETC.

1. Obligations or Securities	2. Amount Owned	3. Interest Received
(a) Obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia	$	$
(b) Securities issued under the provisions of the Federal Farm Loan Act, or under such Act as amended		
(c) Liberty 3½% Bonds and other obligations of United States issued before Sept. 1, 1917, and obligations of United States possessions		
(d) Liberty 4% and 4½% Bonds and other obligations of the United States issued after September 1, 1917		

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements (if any), has been examined by me, and, to the best of my knowledge and belief, is a true and complete return made in good faith for the accounting period as stated, pursuant to the Revenue Act of 1928 and the Regulations issued under authority thereof.

Mr. and Mrs. A. Amerdirer, dba J. Amerdirer

Sworn to and subscribed before me this 23rd day of February, 1929.

by Mr. Jos. Amerdirer
(Member of partnership)

Dan O'Hara
(Signature of officer administering oath)

Notary Public.
(Title)

(Address of partner)

(An amended return must be plainly marked "Amended" across face of return)

5—16888

(Testimony of Dan O'Hanlon.)

Mr. Mitchell: Also the individual income tax return for the calendar year 1925 for Mr. Kammerdiner, which is signed "J. Kammerdiner by Mrs. J. Kammerdiner."

The Clerk: That will be 23.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 23.") [126]

DEFENDANT'S EXHIBIT NO. 23

Form 1040
U INTERNAL REVENUE
(Collector's Stamp)

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES OF MORE THAN $5,000

OR NET INCOMES, REGARDLESS OF AMOUNT, IF DERIVED FROM A PROFESSION OR BUSINESS, INCLUDING FARMING

For Calendar Year 1924

If Your Books Are Conducted on a Fiscal Year Basis, or Income is Received from a Partnership or Fiduciary Computed on a Fiscal Year Basis, Form 1040FY Should be Secured from the Collector and Filed in Lieu of This Form

File This Return with the Collector of Internal Revenue for Your District on or Before March 15, 1925

(PRINT NAME AND ADDRESS PLAINLY BELOW)

Do Not Write in These Spaces

File Code 206

Serial Number

First Payment $

Examined

Cash Check M. O. Cert. of Ind.

4220.70

J. Zammerdiner

formerly of Clinton S., now of 257 So. Kingsley Ave

(Street and number, or rural route)

Los Angeles, Calif.

(Post office) (County) (State)

OCCUPATION, PROFESSION, OR KIND OF BUSINESS Partner in Hotel, Real Estate & Investments

1. Are you a citizen or resident of the United States? Yes
2. If you filed a return for 1924, what Collector's office was it sent? Los Angeles
3. Is this a joint return of husband and wife?
4. Were you married and living with husband or wife on the last day of your taxable year? Yes
5. If not, were you on the last day of the taxable year supporting one or more persons living in your household who are closely related to you by blood, marriage, or adoption?
6. If your status in respect to questions 4 and 5 changed during year, state date of such change
7. How many of such persons (other than husband or wife under 18 years of age or incapable of self-support because mentally or physically defective were receiving their chief support from you on the last day of your taxable year? $2000.00 exemption taken for wife.

INCOME

	Amount received	Expenses paid (Explain in Schedule F)
1. Salaries, Wages, Commissions, etc. (State name and address of person from whom received)		
R. A. R. ATT'D. TO 1925 Income		
2. Income from Business or Profession. (From Schedule A)		
3. Interest on Bank Deposits, Corporation Bonds, etc. (except interest upon obligations of the United States paid at source)		
(a) Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source		
4. Income from Partnerships, Fiduciaries, etc. (State name and address of partnership, etc.)		
Mr. and Mrs. J. Zammerdiner, Abu J. Zammerdiner	25,674.82	
Joint Account M...itchie, M. Zammerdiner, ...eCourt		
and J. Zammerdiner	2,817.89	
5. Rents and Royalties. (From schedule B)		
6. Profit from Sale of Real Estate, Stocks, Bonds, etc. (From schedule C)		
7. Dividends on Stock of Domestic Corporations	289.41	
8. Taxable Interest on Liberty Bonds, etc. (From Schedule E)		
9. Other Income (including dividends received on stock of foreign corporations) (State nature of items)		
(a)		
(b)		
(c)		
10. TOTAL INCOME IN ITEMS 1 TO 9	28,782.12	

U.S. BOARD OF TAX APPEALS
DOCKET 41643
PETITIONER'S EXHIBIT
JUN 10 1931

DEDUCTIONS

11. Interest Paid	
12. Taxes Paid. (Explain in Schedule F)	
13. Losses by Fire, Storm, etc. (Explain in Table on page 2)	
14. Bad Debts. (Explain in Schedule F)	
15. Contributions. (Explain in Schedule F)	
16. Other Deductions Authorized by Law. (Explain below or on a separate sheet)	
(a)	
(b)	
(c)	
17. TOTAL DEDUCTIONS IN ITEMS 11 TO 16	
18. NET INCOME (Item 10 minus Item 17)	28,782.12

COMPUTATION OF TAX (See Instruction 22 as revised)

19. Earned Net Income not over $20,000	$ 5000.00	30. Net Income (Item 18 on return)	$ 28782.12	41. Normal Tax (1½% of Item 37)	60.00
20. Less Personal Exemption and Credit for Dependents	2700.00	31. Less Dividends (Item 7 on return)	$289.41	42. Normal Tax (3% of Item 39)	120.00
21. Balance (Item 19 minus 20)	$ 2300.00	32. Interest on Liberty Bonds, etc. (Item 8)		43. Normal Tax (6% of Item 40)	59.03
22. Amount taxable at 1½% (not over the first $4,000 of Item 21)		33. Personal Exemption	(2700.00	44. Surtax on Item 18 (see Instruction 22 as revised)	1.07
23. Amount taxable at 3% (not over the second $4,000 of Item 21)		34. Credit for Dependents	(	44a. Tax on Net Income Total of Items 41, 42, 43, and 44	1982.20
24. Amount taxable at 5% (balance over $8,000 of Item 21)		35. Total of Items 31, 32, 33, and 34	2989.41	45. Adjustment for Capital Gain or Loss (12½% of Column 9, Schedule D)	
25. Normal Tax (1½% of Item 22)	$ 34.50	36. Balance (Item 30 minus 35)	25792.71	46. Total of or difference between Items 44a and 45	
26. Normal Tax (3% of Item 23)		37. Amount taxable at 1½% (not over the first $4,000 of Item 36)	4000.00	47. Less Credit of 25% of Tax on Earned Net Income (Item 29)	8.62
27. Normal Tax (6% of Item 24)		38. Balance (Item 36 minus 37)	21792.71	48. Total Tax (Item 46 minus 47)	
28. Surtax on Item 19		39. Amount taxable at 3% (not over the second $4,000 of Item 36)	4000.00	49. Less Income Tax paid at source (Item 40 of Item 3a)	
28a. Tax on Earned Net Income (total of Items 25, 26, 27, and 28)	$	40. Balance (Item 36 minus 39) over $8,000 of Item 36)	17792.71	50. Income and Profits Taxes paid to foreign country or U. S. possession	
29. Credit of 25% of Item 28a (not over 25% of Item 28, 41, 42, and 43)	8.62			51. Balance of Tax (Item 48 minus Items 49 & 50)	1973.8

NOTE.—The above Instructions and Computation of Tax should be retained with the duplicate copy of your return. The following copy must be attached and securely affixed at the foot of the first page of your original return and filed with the Collector of Internal Revenue for your district.

503.58 Refund
3 J 490.00 ea

SCHEDULE A—INCOME FROM BUSINESS OR PROFESSION (See Instruction 2)

1. Total receipts from business or profession (state kind of business)

Cost of Goods Sold

2 Labor
3 Material and supplies
4 Merchandise bought for sale
5 Other costs (itemize below or on separate sheet)
6. Plus inventory at beginning of year
7 Total (Lines 2 to 6, inclusive)
8. Less inventory at end of year
9. Net Cost of Goods Sold (Line 7 minus Line 8)

Other Business Deductions

10. Salaries, exclusive of Labor reported on Line 2, and compensation for your own services
11 Interest on business indebtedness to others
12. Taxes on business and business property
13 Losses by fire, storm, etc. (explain in table provided therefor at foot of page)
14 Bad debts arising from sales
15 Depreciation (explain in table provided therefor at foot of page)
16 Rent, repairs, and other expenses (itemized below or on separate sheet)
17. Total (Lines 10 to 16, inclusive)
18. Total Deductions (Line 9 plus Line 17)
19. Net Income (Line 1 minus Line 18) (Enter as Item 2)

Explanation of deductions claimed on Lines 5 and 16

SCHEDULE B—INCOME FROM RENTS AND ROYALTIES (See Instruction 5)

1. Kind of Property	2. Amount Received	3. Cost	4. Value as of March 1, 1913	5. Depreciation (Explain in table provided therefor at foot of page)	6. Repairs	7. Other Expenses (Itemize below)	8. Net Income (Enter as Item 3)

Explanation of deductions claimed in Column 7

SCHEDULE C—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 6)

1. Kind of Property	2. Date Acquired	3. Date Sold	4. Amount Received	5. Depreciation (Explain in table provided therefor at foot of page)	6. Cost	7. Value as of March 1, 1913	8. Net Amount of Improvements and Betterments	9. Net Profit (Enter as Item 4)

State how property was acquired

SCHEDULE D—CAPITAL NET GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (See Instruction 6)

1. Kind of Property	2. Date Acquired (Mo., Day, Yr.)	3. Date Sold (Mo., Day, Yr.)	4. Amount Received	5. Depreciation (Explain in table provided therefor at foot of page)	6. Cost	7. Value as of March 1, 1913	8. Net Amount of Improvements and Betterments	9. Net Gain (Enter as Item 5) or Loss (Enter as Item 6)

State how property was acquired

SCHEDULE E—INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES (See Instruction 8)

1. Description of Bonds	2. Interest Received or Accrued	3. Amount Owned	4. Principal Amount Exempt from Taxation	5. Amount Owned in Excess of Exemption	6. Interest Amount (Column 2 or Part of Column 2) (Enter as Item 7)
(a) Obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia			All	XXXXXXXXXXXXXXX	
(b) Securities issued under Federal Farm Loan Act or Farm Loan Act as amended			All	XXXXXXXXXXXXXXX	
(c) Liberty 3½% Bonds and other obligations of United States issued before Sept. 1, 1917, and obligations of possessions of the United States			All	XXXXXXXXXXXXXXX	
(d) Liberty 4% and 4½% Bonds, Treasury 4½% Bonds, Treasury Certificates, and Treasury War Savings Certificates			$5,000		
(e) Liberty 4% and 4½% Bonds			$50,000		
(f) Treasury Notes			None		

EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC., CLAIMED IN SCHEDULE A, AND IN ITEM 13

Kind of Property	Date Acquired	Cost	Value as of March 1, 1913	Amount of Insurance	Deduction for Depreciation to March 1, 1913	Insurance and Salvage Value	Net Loss (Enter as Item 13)

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B

Kind of Property (Buildings state material of which constructed)	Date Acquired	Actual Life in Years	Reasonable Life After Acquirement	Cost	Value as of March 1, 1913	Amount of Depreciation Sustained Since March 1, 1913	Amount of Depreciation Allowed Since March 1, 1913

SCHEDULE F—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 12, 14, AND 15

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements (if any), has been examined by me, and, to the best of my knowledge and belief, is a true and complete return made in good faith for the taxable year as stated, pursuant to the Revenue Act of 1924 and the Regulations issued under authority thereof.

Assistant Cashier
(If return made by agent, the reason therefor must be stated on this line)

Sworn to and subscribed before me this 15th day of March 1926

Notary Public.

Signature of officer administering oath

Title

E. Hammerdinger
(Signature of taxpayer (or agent))

Mrs. E. Hammerdinger
(Address of taxpayer (or agent))

0.2

(Testimony of Dan O'Hanlon.)

INCOME TAX RETURN FOR 1925 OF J. KAMMERDINER, OF LOS ANGELES, CALIFORNIA

Statement showing income and expenses of Orange Grove owned jointly by W. R. Ritchie, Wm. Kammerer, J. Kammerdiner, and T. McCart, of Fullerton and Los Angeles, Calif.

Received from Packing House, after deducting picking, hauling and fumigating charges			$13,495.51
Received for oil			199.62
			13,695.13
Expenses—			
Taxes	326.00		
Cultivating, etc.	800.00	(9)	
Water	480.00		
Fertilizer	326.56		
Extra Labor	178.00		
Depreciation	212.00		2,422.56
			$11,271.57

Depreciation 3% on $6750.00 (15 acres at 450.00 an acre) $11,271.57 divided equally between four, each receiving $2,817.89√

[Endorsed]: Filed Dec. 29, 1941.

Mr. Mitchell: Then the individual income tax return of Mrs. Kammerdiner for the year 1926.

The Clerk: 24.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 24.")

DEFENDANT'S EXHIBIT NO. 24

Form 1040
U. S. INTERNAL REVENUE
(Auditor's Stamp)

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES OF MORE THAN $5,000

OR NET INCOMES, REGARDLESS OF AMOUNT, IF DERIVED FROM A PROFESSION OR BUSINESS, INCLUDING FARMING

For Calendar Year 1926

File This Return With the Collector of Internal Revenue for Your District on or Before March 15, 1927

Do Not Write in These Spaces

File Code 20 b

Serial Number

(Cashier's Stamp)

Cash Check M. O. Cert. of Int. First Payment

$

Carded

As

(PRINT NAME AND ADDRESS PLAINLY BELOW)

MRS. J. KAMMERDINER

237 SO. HIGHLAND AVENUE
(Street and number, or rural route)

LOS ANGELES, LOS ANGELES, CALIFORNIA.
(Post office) (County) (State)

OCCUPATION, PROFESSION, OR KIND OF BUSINESS PARTNER IN ROTARY JAR BUSINESS. (OIL FIELDS)

1. Are you a citizen or resident of the United States? YES
2. If you filed a return for 1925, with what collector's office was it sent? LOS ANGELES
3. Is this a joint return of husband and wife? NO
4. Full name of husband or wife if a separate return was made and the Collector's office where it was sent MR. J. KAMMERDINER as above
5. Were you married and living with husband or wife on the last day of your taxable year? YES
6. If not, were you on the last day of your taxable year supporting one or more persons living in your household who are closely related to you?
7. If your status in respect to questions 5 and 6 changed during the year, state date of such change
8. How many dependent persons (other than husband or wife under 18 years of age or incapable of self-support because mentally or physically defective) are you receiving their chief support from you on the last day of your taxable year? 3

FIELD AUDIT

BOARD OF TAX APPEALS
DOCKET NO. 47643
PETITIONER'S EXHIBIT NO. 8
JUN 10 1931
RESPONDENT'S EXHIBIT NO.

husband.

INCOME

Item and Instruction No.		Amount received	Expenses paid (Explain in Schedule F)
1.	Salaries, Wages, Commissions, etc. (State name and address of person from whom received)	$	$
2.	Income from Business or Profession. (From Schedule A)		
3.	Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest upon which a tax was paid at source)		
	(a) Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source		
4.	Income from Partnerships, Fiduciaries, etc. (State name and address of partnership, etc.)		
	J. Kammerdiner, Los Angeles, Calif..	earned	26,724.08
			6,681.01
5.	Rents and Royalties. (From Schedule B)		
6.	Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)		
7.	Dividends on Stock of Domestic Corporations		368.75
8.	Taxable Interest on Liberty Bonds, etc. (From Schedule E)		
9.	Other Income (including dividends received on stock of foreign corporations). (State nature of income)		
	(a)		
	(b)		
	(c)		
10.	TOTAL INCOME IN ITEMS 1 TO 9		$3,773.84

DEDUCTIONS

11	Interest Paid	$
12.	Taxes Paid. (Explain in Schedule F)	
13.	Losses by Fire, Storm, etc. (Explain in Table on page 2)	
14.	Bad Debts. (Explain in Schedule F)	
15.	Contributions. (Explain in Schedule F) First Church of Christ Scientist	200.00
16.	Other Deductions Authorized by Law. (Explain below or on separate sheet)	
	(a)	
	(b)	
	(c)	
17.	TOTAL DEDUCTIONS IN ITEMS 11 TO 16	$ 200.00
18.	NET INCOME (Item 10 minus Item 17)	$3,573.84

COMPUTATION OF TAX (See Instruction 21)

19	Earned Net Income (not over $20,000)	$6681.01	31.	Net Income (Item 18 above)		$3573.84	
20.	Less Personal Exemption and Credit for Dependents (see Instruction 20)	1750.00	32.	Less Dividends (Item 7 above)	$368.75		
21.	Balance (Item 19 minus 20)	$4931.01	33.	Interest on Liberty Bonds, etc. (Item 8)			
22.	Amount taxable at 1½% (not over the first $4,000 of Item 21)	$4000.00	34.	Personal Exemption	1750.00		
23.	Amount taxable at 3% (not over the second $4,000 of Item 21)	931.01	35.	Credit for Dependents			
24.	Amount taxable at 5% (balance over $8,000 of Item 21)		36.	Total of Items 32, 33, 34, and 35		2118.75	
25.	Normal Tax (1½% of Item 22)	$ 60.00	37.	Balance (Item 31 minus 36)		$1455.09	
26.	Normal Tax (3% of Item 23)	27.93	38.	Amount taxable at 1½% (not over the first $4,000 of Item 37)		4000.00	
27.	Normal Tax (5% of Item 24)		39.	Balance (Item 37 minus 38)		27455.09	
28.	Surtax on Item 19 (see Instruction 21)		40.	Amount taxable at 3% (not over the second $4,000 of Item 37)		4000.00	
29.	Tax on Earned Net Income (total of Items 25, 26, 27, and 28)	$ 87.93	41.	Amount taxable at 5% (balance over $8,000 of Item 37)		23455.09	
30.	Credit of 25% of Item 29 (not over 25% of Items 28, 42, 43, and 44)	$ 21.98					

42.	Normal Tax (1½% of Item 38)	$ 60.00	120.00
43.	Normal Tax (3% of Item 40)		
44.	Normal Tax (5% of Item 41)		1172.76
45.	Surtax on Item 18 (see Instruction 21)		1181.65
46.	Tax on Net Income (total of Items 42, 43, 44, and 45)		2534.41
47.	Less Credit of 25% of Tax on Earned Net Income (Item 30)		21.98
48.	Balance (Item 46 minus 47)		2512.43
49.	Adjustment for Capital Gain or Loss (12½% of Column 9, Schedule D)		712.43
50.	Total Tax (total of or difference between Items 48 and 49)		$ 1800.00
51.	Less Income Tax Paid at Source		
52.	Income and Profits Taxes paid to a foreign country or U. S. possession		
53.	Balance of Tax (Item 50 minus Items 51 and 52)		2,512.43

An amended return must be marked "Amended" at top of return

Checks and drafts will be accepted only if payable at par

SCHEDULE A—INCOME FROM BUSINESS OR PROFESSION (See Instruction 2)

1. Total receipts from business or profession (state kind of business) $

Cost of Goods Sold

2. Labor $
3. Material and supplies
4. Merchandise bought for sale
5. Other costs (itemize below or on separate sheet)
6. Plus inventory at beginning of year
7. Total (Lines 2 to 6, inclusive) $
8. Less inventory at end of year
9. Net Cost of Goods Sold (Line 7 minus Line 8) $

Other Business Deductions

10. Salaries, exclusive of "Labor," reported on Line 2, and exclusive of compensation for your services $
11. Interest on business indebtedness to others
12. Taxes on business and business property
13. Losses by fire, storm, etc. (explain in table provided therefor at foot of page)
14. Bad debts arising from sales
15. Depreciation, obsolescence, and depletion (explain in table provided therefor at foot of page)
16. Rent, repairs, and other expenses (itemize below or on separate sheet)
17. Total (Lines 10 to 16, inclusive) $
18. Total Deductions (Line 9 plus Line 17) $
19. Net Profit (Line 1 minus Line 18) (Enter as Item 2) $

Explanation of deductions claimed on Lines 5 and 16

SCHEDULE B—INCOME FROM RENTS AND ROYALTIES (See Instruction 5)

1. Kind of Property	2. Amount Received	3. Cost	4. Value as of March 1, 1913	5. Depreciation (Explain in table at foot of page)	6. Repairs	7. Other Expenses (Itemize below)	8. Net Profit (Enter as Item 3)
	$	$	$	$	$	$	$

Explanation of deductions claimed in Column 7

SCHEDULE C—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 6)

1. Kind of Property	2. Date Acquired	3. Amount Received	4. Depreciation Allowable Since Acquisition	5. Cost	6. Value as of March 1, 1913	7. Subsequent Improvements	8. Net Profit (Enter as Item 6)
		$	$	$	$	$	$

State how property was acquired

SCHEDULE D—CAPITAL NET GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (See Instruction 6a)

1. Kind of Property	2. Date Acquired	3. Date Sold	4. Amount Received	5. Depreciation Allowable Since Acquisition	6. Cost	7. Value as of March 1, 1913	8. Subsequent Improvements, and Capital Deductions	9. Net Gain or Loss (Enter 12½% as Item 4e)
	Mo. Day Year	Mo. Day Year	$	$	$	$	$	$

State how property was acquired

SCHEDULE E—INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES (See Instruction 8)

1. Obligations or Securities	2. Interest Received or Accrued	3. Amount Owned	4. Principal Amount Exempt from Taxation	5. Amount Owned in Excess of Exemptions	6. Interest on Amount in Excess of Exemptions (Enter as Item 5)
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia	$	$	All	X X X X X X X X X X X X	
(b) Securities issued under Federal Farm Loan Act, or under such Act as Amended			All	X X X X X X X X X X X X	
(c) Liberty 3½% Bonds and other obligations of United States issued on or before September 1, 1917, and obligations of possessions of the United States			All	X X X X X X X X X X X X	
(d) Liberty 4% and 4¼% Bonds, Treasury 3¾%, 4%, and 4½% Bonds, Treasury Certificates of Indebtedness, and Treasury (War) Savings Certificates			$5,000	$	$
(e) Treasury Notes			None		
(f) Interest to July 2, 1926, on not exceeding $50,000 of Liberty 4% and 4¼% Bonds owned in excess of $5,000 of the obligations enumerated on Line (d)	$	Taxable Interest (total of Lines (d) and (e), Column 6, minus Line (f), Column 2)		$	

SCHEDULE F—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 12, 14, AND 18

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B

1. Kind of Property (If buildings, state material of which constructed)	2. Date Acquired	3. Age When Acquired	4. Probable Life After Acquirement	5. Cost	6. Value as of March 1, 1913	Amount of Depreciation Charged Off	
						7. Previous years	8. This year
				$	$	$	$

EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC., CLAIMED IN SCHEDULE A, AND IN ITEM 13

1. Kind of Property	2. Date Acquired	3. Cost	4. Value as of March 1, 1913	5. Subsequent Improvements	6. Depreciation Allowable Since Acquisition	7. Insurance and Salvage Value	8. Deductible Loss
		$	$	$	$	$	$

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements (if any), has been examined by me, and, to the best of my knowledge and belief, is a true and complete return made in good faith for the taxable year as stated, pursuant to the Revenue Act of 1926 and the Regulations issued under authority thereof.

(If return is made by agent, the reason therefor must be stated on this line)

Sworn to and subscribed before me this 11 day of March, 1927.

Don Hanlon, Notary Public
(Signature of officer administering oath) (Title)

NOTARIAL SEAL

Jas. F. Commander
(Signature of individual or agent)

3760 Highland Ave
(Address of individual or agent)

9—1486

[Endorsed]: Filed Dec. 29, 1941.

(Testimony of Dan O'Hanlon.)

Mr. Mitchell: Then the individual income tax return of Mr. Kammerdiner for the year 1926.

The Clerk: 25.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 25.")

DEFENDANT'S EXHIBIT NO. 25

Form 1040
INTERNAL REVENUE
(Auditor's Stamp)

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES OF MORE THAN $5,000

OR NET INCOMES, REGARDLESS OF AMOUNT, IF DERIVED FROM A PROFESSION OR BUSINESS, INCLUDING FARMING

For Calendar Year 1926

File This Return With the Collector of Internal Revenue for Your District on or Before March 15, 1927

(PRINT NAME AND ADDRESS PLAINLY BELOW)

Mr. J. Kammerdiner
(Name) 307095
237 So. Highland Ave
(Street and number, or rural route)
Los Angeles, Los Angeles, California.
(Post office) (County) (State)

Do Not Write in These Spaces

File No. 20698
Serial Number 838
Audited
Cash Check M.O. Certified
Cashier's Check
Bills
Coin
Total
Carded
As

OCCUPATION, PROFESSION, OR KIND OF BUSINESS: Partner in Retary Jar Business.

1. Are you a citizen or resident of the United States? YES
2. If you filed a return for 1925, to what Collector's office was it sent? LOS ANGELES
3. Is this a joint return of husband and wife? NO
4. State name of husband or wife if a separate return was made and the Collector's office where it was sent: Mrs. J. Kammerdiner as above.
5. Were you married and living with husband or wife on the last day of your taxable year? YES
6. If not, were you on the last day of your taxable year supporting one or more persons living in your household who are closely related to you?
7. If your status in respect to questions 5 and 6 changed during the year, state date of such change
8. How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support because mentally or physically defective were receiving their chief support from you on the last day of your taxable year? None.

BOARD OF TAX APPEALS
DOCKET NO. 41643
FILED JUN 10 1931
PETITIONER'S EXHIBIT 5
RESPONDENT'S

Item and Instruction No.	INCOME	Amount received	Expenses paid (Explain in Schedule F)
1	Salaries, Wages, Commissions, etc. (State name and address of employer)	$	$
2	Income from Business or Profession. (From Schedule A)		
3	Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest upon which a tax was paid at source)		
	(a) Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source		
4	Income from Partnerships, Fiduciaries, etc. (State name and address of partnership, etc.)		
	J. Kammerdiner of Los Angeles, California.	26,724.08	
	Earned Inc	6,681.01	
	Ritchie, Kammerdiner, McCart and Kammerer Joint account on orange grove. Please see statement attached.	3,507.83	
5	Rents and Royalties. (From Schedule D)		
6	Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)		
7	Dividends on Stock of Domestic Corporations	388.75	
8	Taxable Interest on Liberty Bonds, etc. (From Schedule E)		
	Other Income (including dividends received on stock of foreign corporations). (State nature of income)		
10	TOTAL INCOME IN ITEMS 1 TO 9		3,507.83
			35,773.84

DEDUCTIONS

11	Interest Paid	37,281.67
12	Taxes Paid. (Explain in Schedule F)	
13	Losses by Fire, Storm, etc. (Explain in Table on page 2)	
14	Bad Debts. (Explain in Schedule F)	
15	Contributions. (Explain in Schedule F)	
16	Other Deductions Authorized by Law. (Explain below or on separate sheet)	
17	TOTAL DEDUCTIONS IN ITEMS 11 TO 16	
18	NET INCOME (Item 10 minus Item 17)	37,281.67

COMPUTATION OF TAX (See Instruction 21)

[illegible]	$20,000	6681.01	21 Net Income (Item 18 above)	37,281.67	
[illegible]	and Credit	2950.00	22 Less Dividends (Item 7 above)	388.75	
[illegible]	Instruction 20	3731.01	23 Interest on Liberty Bonds, etc. (Item 8)		
[illegible]	over the	3731.01	24 Personal Exemption	1750.00	
[illegible]	over the		25 Credit for Dependents	1200.00	3,338.75
[illegible]	balance over		26 Total of Items 22, 23, 24, and 25		
[illegible]	of Item 25	45.96	27 Balance (Item 21 minus 26)	33,942.92	
[illegible]	of Item 23		28 Amount taxable at 1½% (not over the first $4,000 of Item 27)	4,000.00	
[illegible]	of Item 24		29 Balance (Item 27 minus 28)	29,962.92	
[illegible]	Item 19 on Instruction 21		30 Amount taxable at 3% (not over the second $4,000 of Item 27)	4,000.00	
[illegible]	Net Income over $8,000 and not over $20,000	89.96	31 Amount taxable at 5% (balance over $8,000 of Item 27)	25,962.92	
[illegible]	of Item 28, 29, 30 and 31	23.99			

42	Normal Tax (1½% of Item 38)	60.0
43	Normal Tax (3% of Item 40)	120.0
44	Normal Tax (5% of Item 41)	1298.5
45	Surtax on Item 18 (see Instruction 21)	1472.92
46	Tax on Net Income (total of Items 42, 43, 44, and 45)	2950.67
47	Less Credit of 25% of Tax on Earned Net Income (Item 30)	13.0
48	Balance (Item 46 minus 47)	2938.18
49	Adjustment for Capital Gain or Loss (12½% of Column 9, Schedule D)	838.18 less
50	Total Tax (total of or difference between Items 48 and 49)	with Carry
51	Less Income Tax Paid at Source	back
52	Income and Profits Taxes paid to a foreign country or U. S. possession	
53	Balance of Tax (Item 50 minus Items 51 and 52)	2,938.96

An amended return must be marked "Amended" at top of return

Checks and drafts will be accepted only if payable at par

2912.33

SCHEDULE A—INCOME FROM BUSINESS OR PROFESSION (See Instruction 9)

1. Total receipts from business or profession (state kind of business) $

Cost of Goods Sold

2. Labor $
3. Material and supplies
4. Merchandise bought for sale
5. Other costs (Itemize below or on separate sheet)
6. Plus inventory at beginning of year
7. Total (Lines 2 to 6, inclusive) $
8. Less inventory at end of year
9. Net Cost of Goods Sold (Line 7 minus Line 8) $

Other Business Deductions

10. Salaries, exclusive of "Labor," reported on Line 3, and exclusive of compensation for your services $
11. Interest on business indebtedness to others
12. Taxes on business and business property
13. Losses by fire, storm, etc. (explain in table provided therefor at foot of page)
14. Bad debts arising from sales
15. Depreciation, obsolescence, and depletion (explain in table provided therefor at foot of page)
16. Rent, repairs, and other expenses (Itemize below or on separate sheet)
17. Total (Lines 10 to 16, inclusive) $
18. Total Deductions (Line 9 plus Line 17) $
19. Net Profit (Line 1 minus Line 18) (Enter as Item 7) $

Explanation of deductions claimed on Lines 8 and 16

SCHEDULE B—INCOME FROM RENTS AND ROYALTIES (See Instruction 5)

1. Kind of Property	2. Amount Received	3. Cost	4. Value as of March 1, 1913	5. Depreciation (Explain in table at foot of page)	6. Repairs	7. Other Expenses (Itemize below)	8. Net Profit (Enter as Item 8)
	$	$	$	$	$	$	$

Explanation of deductions claimed in Column 7

SCHEDULE C—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 6)

1. Kind of Property	2. Date Acquired	3. Amount Received	4. Depreciation Allowable Since Acquisition	5. Cost	6. Value as of March 1, 1913	7. Subsequent Improvements	8. Net Profit (Enter as Item 6)
		$	$	$	$	$	$

State how property was acquired

SCHEDULE D—CAPITAL NET GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (See Instruction 6a)

1. Kind of Property	2. Date Acquired	3. Date Sold	4. Amount Received	5. Depreciation Allowable Since Acquisition	6. Cost	7. Value as of March 1, 1913	8. Subsequent Improvements and Capital Deductions	9. Net Gain or Loss (Enter 12½% as Item 4)
	Mo. Day Year	Mo. Day Year						
			$	$	$	$	$	$

State how property was acquired

SCHEDULE E—INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES (See Instruction 8)

1. Obligations or Securities	2. Interest Received or Accrued	3. Amount Owned	4. Principal Amount Exempt from Taxation	5. Amount Owned in Excess of Exemptions	6. Interest on Amount in Excess of Exemptions (Enter as Item 5)
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia	$	$	All	x x x x x x	x x x x x x x x x
(b) Securities issued under Federal Farm Loan Act, or under such Act as Amended			All	x x x x x x	x x x x x x x x x
(c) Liberty 3½% Bonds and other obligations of United States issued on or before September 1, 1917, and obligations of possessions of the United States			All	x x x x x x	x x x x x x x x x
(d) Liberty 4% and 4½% Bonds, Treasury 3¾%, 4%, and 4½% Bonds, Treasury Certificates of Indebtedness, and Treasury (War) Savings Certificates			$5,000	$	$
(e) Treasury Notes			None		
(f) Interest to July 2, 1926, on not exceeding $50,000 of Liberty 4% and 4½% Bonds owned in excess of $5,000 of the obligations enumerated on Line (d)	$	Taxable Interest (total of Lines (d) and (e), Column 6, minus Line (f), Column 2)			$

SCHEDULE F—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 12, 14, AND 15

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B

1. Kind of Property (If buildings, state material of which constructed)	2. Date Acquired	3. Age When Acquired	4. Probable Life After Acquirement	5. Cost	6. Value as of March 1, 1913	Amount of Depreciation Charged Off	
						7. Previous years	8. This year
				$	$	$	$

EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC., CLAIMED IN SCHEDULE A, AND IN ITEM 13

1. Kind of Property	2. Date Acquired	3. Cost	4. Value as of March 1, 1913	5. Subsequent Improvements	6. Depreciation Allowable Since Acquisition	7. Insurance and Salvage Value	8. Deductible Loss
		$	$	$	$	$	$

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements (if any), has been examined by me, and, to the best of my knowledge and belief, is a true and complete return made in good faith for the taxable year as stated, pursuant to the Revenue Act of 1926 and the Regulations issued under authority thereof.

(If return is made by agent, the reason therefor must be stated on this line)

Sworn to and subscribed before me this 11 day of March, 1927.

Dan O'Keefe, Notary Public

(Signature of officer administering oath) (Title)

NOTARIAL SEAL

J. Kaumeyer

(Signature of individual or agent)

(Address of individual or agent)

(Testimony of Dan O'Hanlon.)

STATEMENT SHOWING INCOME AND EXPENSES OF ORANGE GROVE, OWNED JOINTLY BY W. R. RITCHIE ESTATE, WM. KAMMRER, J. KAMMERDINER AND T. McCART.

Received from Packing House, after deducting packing house charges, picking, hauling, etc		17,247.34
From oil		173.30
		17,420.65
E. E. Ross, for cultivating	900.00	
Fumigating	498.50	
Water	486.00	
Taxes	434.36	
Fertilizer	522.43	
Repairs to pipeline, etc	123.68	
Pruning and extra labor	212.35	
Depreciation	212.00	3,389.32
		14,031.33

Depreciation 3% on 6750.00 (11 ac oranges) $14,031.33 divided equally between four, each receiving $3,507.83.

[Endorsed]: Filed Dec. 29, 1941.

Mr. Mitchell: The individual return of Mr. Kammerdiner for the year 1928.

The Clerk: 26.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 26.")

DEFENDANT'S EXHIBIT NO. 26.

Form 1040
U. S. Internal Revenue
(Auditor's Stamp)

AUDITED
Tax Liability
Interest
Penalty
Total
Return Audited By
Date Forwarded to Collector
Account No.

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES FROM SALARIES OR WAGES OF MORE THAN $5,000
OR INCOMES, REGARDLESS OF AMOUNT, FROM BUSINESS, PROFESSION, RENTS, OR SALE OF PROPERTY

For Calendar Year 1928

File This Return With the Collector of Internal Revenue for Your District on or Before March 15, 1929

Do Not Write in These Spaces
File No. 206
Serial Number
(Auditor's Stamp)
RECEIVED WITH REMITTANCE
MAR 15 1929
Deputy Collector of Internal Revenue
6th Dist. Cal. M.A. Gaddis
$ 354.20
Cashed

(FULL NAME AND ADDRESS PLAINLY BELOW)

310504

Mr. J. Hammerdiner
(Name)
84 Tiger Blvd. 837 So. Highland & Ameena Bldg.
(Street and Number, or Rural Route)
Los Angeles, Los Angeles, California.
(Post office) (County) (State)

Occupation, Profession, or Business Lawyer in Oil, Jar business Age 41

1. Are you a citizen or resident of the United States? Yes.
2. If you filed a return for 1927, to what Collector's office was it sent? Los Angeles
3. Is this a joint return of husband and wife? No.
4. State name of husband or wife if a separate return was made and the Collector's office where it was sent Los Angeles.
5. Were you married and living with husband or wife on the last day of your taxable year? Yes.
6. If not, were you on the last day of your taxable year supporting one or more persons living in your household who are closely related to you? Yes.
7. If your status in respect to questions 5 and 6 changed during the year, state date and nature of change
8. How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support because mentally or physically defective were receiving their chief support from you on the last day of your taxable year? 3-2 taken by wife.

Line and Instruction No.	INCOME	Amount received	Expenses paid (Explain in Schedule F)	
1.	Salaries, Wages, Commissions, etc. (State name and address of person from whom received) Wholesale Juice Corporation, Los Angeles	$	$	600.00
	Net as per Sch. F			
2.	Income from Business or Profession. (From Schedule A)			
3.	Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest upon which a tax was paid at source)			
	(a) Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source			
4.	Income from Partnerships. (State name and address)			
	[illegible] Partnership, Los Angeles			81,405.44
	-do- Salaries and Int.			17,676.86
	(c) Income from Fiduciaries. (State name and address)			
5.	Rents and Royalties. (From Schedule B)			
6.	Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)			
7.	Dividends on Stock of Domestic Corporations			126.30
8.	Taxable Interest on Liberty Bonds, etc. (From Schedule E)			
9.	Other Income (including dividends received on stock of foreign corporations). (State nature of income)			
	(a)			
	(b)			
10.	TOTAL INCOME IN ITEMS 1 TO 9			$ 86,008.60
	DEDUCTIONS			
11.	Interest Paid		$	
12.	Taxes Paid. (Explain in Schedule I)			
13.	Losses by Fire, Storm, etc. (Explain in Table on page 3)			
14.	Bad Debts. (Explain in Schedule F)			
15.	Contributions. (Explain in Schedule F) Community Chest			200.00
16.	Other Deductions Authorized by Law. (Explain in Schedule F)			
17.	TOTAL DEDUCTIONS IN ITEMS 11 TO 16			$ 200.00
18.	NET INCOME (Item 10 minus Item 17)			$ 85,808.60

RECEIVED
AUG 19 1929
INTERNAL REVENUE AGENT IN CHARGE

EARNED INCOME CREDIT

19.	Earned Net Income in excess of $3,000	$ 82,808.60
20.	Less Personal Exemption and Credit for Dependents (see Instruction 21)	4,200.00
21.	Balance (Item 19 minus Item 20)	$ 78,608.60
22.	Amount taxable at 1½% (not over the first $4,000 of Item 21)	$ 4,000.00
23.	Amount taxable at 3% (balance over the second $4,000 of Item 21)	4,000.00
24.	Amount taxable at 5% (balance over $8,000 of Item 21)	70,608.60
25.	Normal Tax 1½% of Item 22	$ 60.00
26.	Normal Tax 3% of Item 23	120.00
27.	Normal Tax 5% of Item 24	3532.43
28.	Surtax on Item 18 (see Instruction 21)	373.13
29.	Tax on Earned Net Income (total of Items 25, 26, 27, and 28)	$ 4,085.56
30.	Credit of 25% of Item 29 (not over 25% of Items 28, 42, 43, and 44)	$ 133.14

COMPUTATION OF TAX (See Instruction 21)

31.	Net Income (Item 18 above)	$ 85,808.60	
32.	Less Dividends (Item 7 above)	$ 126.30	
33.	Interest on Liberty Bonds, etc. (Item 8)		
34.	Credit for Dependents	4,200.00	
35.	Personal Exemption	1,350.00	
36.	Total of Items 32, 33, 34, and 35	4,326.30	
37.	Balance (Item 31 minus Item 36)	$ 82,504.30	
38.	Amount taxable at 1½% (not over the first $4,000 of Item 37)	4,000.00	
39.	Balance (Item 37 minus Item 38)	$ 78,504.30	
40.	Amount taxable at 3% (not over the second $4,000 of Item 37)	4,000.00	
41.	Amount taxable at 5% (balance over $8,000 of Item 37)	$ 74,504.30	
42.	Normal Tax (1½% of Item 38)	$ 60.00	
43.	Normal Tax (3% of Item 40)	120.00	
44.	Normal Tax (5% of Item 41)	3728.21	
45.	Surtax on Item 18 (see Instruction 21)	373.13	
46.	Tax on Net Income (total of Items 42, 43, 44, and 45)	$ 4278.34	
47.	Adjustment for Capital Gain or Loss (12½% of Column 9, Schedule D)		
48.	Total of or difference between Items 46 and 47	$ 4278.34	
49.	Less Credit of 25% of Tax on Earned Net Income (Item 30)	133.14	
50.	Total Tax (Item 48 minus Item 49)	$ 4145.20	
51.	Less Income Tax Paid at Source		
52.	Income and Profits Taxes paid to a foreign country or U. S. possession		
53.	Balance of Tax (Item 50 minus Items 51 and 52)	$ 4145.20	

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements (if any), has been examined by me, and to the best of my knowledge and belief, is a true and complete return made in good faith for the taxable year as stated, pursuant to the Revenue Act of 1928, and the Regulations issued under authority thereof.

(If return is made by agent, the reason therefor must be stated on this line)

Sworn to and subscribed before me this 27th day of February, 1929.

NOTARIAL SEAL

(Signature of officer administering oath)

(Title)

(Signature of individual or agent)

(Address of agent)

An amended return must be marked "Amended" at top of return

Checks and drafts will be accepted only if payable at par

SCHEDULE A—INCOME FROM BUSINESS OR PROFESSION. (See Instruction 7)

1. Total receipts from business or profession (state kind of business) $

Cost of Goods Sold

2. Labor $
3. Material and supplies
4. Merchandise bought for sale
5. Other costs (itemize below or on separate sheet)
6. Plus inventory at beginning of year
7. Total (Lines 2 to 6, inclusive) $
8. Less inventory at end of year
9. Net Cost of Goods Sold (Line 7 minus Line 8) $

Note.—Enter "C" or "CM" on Lines 6 and 8 to indicate whether inventories are valued at cost, or cost or market, whichever is lower.

Other Business Deductions

10. Salaries, exclusive of "Labor," reported on Line 2 (Do not deduct compensation for your own services) $
11. Interest on business indebtedness to others
12. Taxes on business and business property
13. Losses (explain in table provided therefor at foot of page)
14. Bad debts arising from sales or services
15. Depreciation, obsolescence, and depletion (explain in table provided therefor at foot of page)
16. Rent, repairs, and other expenses (itemized below or on separate sheet)
17. Total (Lines 10 to 16, inclusive) $
18. Total Deductions (Line 9 plus Line 17) $
19. Net Profit (Line 1 minus Line 18) (Enter as Item 2) $

Explanation of deductions claimed on Lines 5 and 16

SCHEDULE B—INCOME FROM RENTS AND ROYALTIES. (See Instruction 5)

1. Kind of Property	2. Amount Received	3. Cost	4. Value as of March 1, 1913	5. Depreciation (Explain in table at foot of page)	6. Repairs	7. Other Expenses (Itemize below)	8. Net Profit (Enter as Item 3)
	$	$	$	$	$	$	$

Explanation of deductions claimed in Column 7

SCHEDULE C—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 6)

1. Kind of Property	2. Date Acquired	3. Amount Received	4. Depreciation Allowable Since Acquisition	5. Cost	6. Value as of March 1, 1913	7. Value as of Date Sold	8. Net Gain or Loss (Enter as Item 4)
		$	$	$	$	$	$

State how property was acquired

SCHEDULE D—CAPITAL NET GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (See Instruction 6a)

1. Kind of Property	2. Date Acquired	3. Date Sold	4. Amount Received	5. Depreciation Allowable Since Acquisition	6. Cost	7. Value as of March 1, 1913	8. Net Gain or Loss from Sales or Exchanges of Capital Assets Held More Than Two Years
	Mo. Day Year	Mo. Day Year					
			$	$	$	$	$

State how property was acquired

SCHEDULE E—INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES (See Instruction 8)

1. Obligations or Securities	2. Interest Received or Accrued	3. Amount Owned	4. Income Amount Exempt from Taxation
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia	$	$	All
(b) Securities issued under Federal Farm Loan Act, or under such Act as Amended			All
(c) Liberty 3½% Bonds and other obligations of United States issued on or before September 1, 1917, and obligations of possessions of the United States			All
(d) Liberty 4% and 4¼% Bonds, Treasury 3½%, 3¾%, 4%, and 4¼% Bonds, Treasury Certificates of Indebtedness, and Treasury Savings Certificates			$5,000
(e) Treasury Notes			None

SCHEDULE F—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 12, 14, 15, AND 16

.....

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B

1. Kind of Property (If buildings, state material of which constructed)	2. Date Acquired	3. Age When Acquired	4. Probable Life After Acquirement	Estimated Value	Claimed Value
				$	$

EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC., CLAIMED IN SCHEDULE A, AND IN ITEM 13

1. Kind of Property	2. Date Acquired	3. Cost	4. Value as of March 1, 1913	Salvage or Insurance	Claimed Value
		$	$	$	$

2—16630

[Endorsed]: Filed Dec. 29, 1941.

(Testimony of Dan O'Hanlon.)

Mr. Mitchell: Then the individual income tax return of Mrs. Kammerdiner for the year 1928.

The Clerk: 27.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 27.")

DEFENDANT'S EXHIBIT NO. 27

Form 1040
Internal Revenue
(Auditor's Stamp)

APR 27 1939

510382

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES FROM SALARIES OR WAGES OF MORE THAN $5,000

OR INCOMES, REGARDLESS OF AMOUNT, FROM BUSINESS, PROFESSION, RENTS, OR SALE OF PROPERTY

For Calendar Year 1928

File This Return With the Collector of Internal Revenue for Your District on or Before March 15, 1929

(PRINT NAME AND ADDRESS PLAINLY BELOW) 311887

Mrs. J. Kemmerling

(Street and number, or rural route)

Los Angeles, Los Angeles, California.
(Post office) (County) (State)

Occupation, Profession, or Business Partner in notary services

Do Not Write in These Spaces

File Code 206

Serial Number

(Collector's Stamp)

Deputy Collector of Internal Revenue
6th Dist. of California

Cash Check M. O. Cert. of Ind.
First Payment
$

Carded

As

1. Are you a citizen or resident of the United States?	Yes.	5. Were you married and living with husband or wife on the last day of your taxable year?	Yes
2. If you filed a return for 1927, to what Collector's office was it sent?	Los Angeles, Calif.	6. If not, were you on the last day of your taxable year supporting one or more persons living in your household who are closely related to you?	--
3. Is this a joint return of husband and wife?	No.	7. If your status in respect to questions 5 and 6 changed during the year, state date and nature of change	no.
4. State name of husband or wife if a separate return was made and the Collector's office where it was sent	Mrs. J. Kemmerling, to Los Angeles.	8. How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support because mentally or physically defective were receiving their chief support from you on the last day of your taxable year?	None

INCOME

Item and Instruction No.		Amount received	Expenses paid (Explain on Schedule F)
1.	Salaries, Wages, Commissions, etc. (State name and address of person from whom received)	$	$
2.	Income from Business or Profession. (From Schedule A)		
3.	Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest upon which a tax was paid at source)		
	(a) Interest on Tax-free Covenant Bonds upon Which a Tax was Paid at Source		
4.	Income from Partnerships. (State name and address) J. Kemmerling, Los Angeles - - -	67,403.44	
	-do- Earned Income - - -	13,800.83	
	(a) Income from Fiduciaries. (State name and address)		
5.	Rents and Royalties. (From Schedule B)		
6.	Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)		
7.	Dividends on Stock of Domestic Corporations	1,204.30	
8.	Taxable Interest on Liberty Bonds, etc. (From Schedule E)		
9.	Other Income (including dividends received on stock of foreign corporations). (State nature of income)		
	(a)		
	(b)		
10.	TOTAL INCOME IN ITEMS 1 TO 9		$ 84,408.60

DEDUCTIONS

11.	Interest Paid	$	
12.	Taxes Paid. (Explain in Schedule F)		
13.	Losses by Fire, Storm, etc. (Explain in Table on page 2)		
14.	Bad Debts. (Explain in Schedule F)		
15.	Contributions. (Explain in Schedule F) Christian Science Church	200.00	
16.	Other Deductions Authorized by Law. (Explain in Schedule F)		
17.	TOTAL DEDUCTIONS IN ITEMS 11 TO 16		$ 200.00
18.	NET INCOME (Item 10 minus Item 17)		$ 84,208.60

EARNED INCOME CREDIT

19.	Earned Net Income (not over $30,000)	$ 16851.80
20.	Less Personal Exemption and Credit for Dependents (see Instruction 20)	2550.00
21.	Balance (Item 19 minus Item 20)	$ 14300.80
22.	Amount taxable at 1½% (not over the first $4,000 of Item 21)	$ 4000.00
23.	Amount taxable at 3% (not over the second $4,000 of Item 21)	4000.00
24.	Amount taxable at 5% (balance over $8,000 of Item 21)	6300.80
25.	Normal Tax (1½% of Item 22)	$ 60.00
26.	Normal Tax (3% of Item 23)	120.00
27.	Normal Tax (5% of Item 24)	315.04
28.	Surtax on Item 19 (see Instruction 21)	23.52
29.	Tax on Earned Net Income (total of Items 25, 26, 27, and 28)	$ 520.56
30.	Credit of 25% of Item 29 (not over 25% of Items 26, 42, 43, and 44)	$ 130.14

COMPUTATION OF TAX (See Instruction 21)

31.	Net Income (Item 18 above)		$ 84208.60		
32.	Less Dividends (Item 7 above)	$ 200.00			
33.	Interest on Liberty Bonds, etc. (Item 8)				
34.	Credit for Dependents	800.00			
35.	Personal Exemption	1750.00	2750.00		
36.	Total of Items 32, 33, 34, and 35				
37.	Balance (Item 31 minus Item 36)		$ 81458.60		
38.	Amount taxable at 1½% (not over the first $4,000 of Item 37)		4000.00		
39.	Balance (Item 37 minus Item 38)		$ 77458.60		
40.	Amount taxable at 3% (not over the second $4,000 of Item 37)		4000.00		
41.	Amount taxable at 5% (balance over $8,000 of Item 37)		$ 73458.60		
42.	Normal Tax (1½% of Item 38)			$	60.
43.	Normal Tax (3% of Item 40)				120.
44.	Normal Tax (5% of Item 41)				3672.9
45.	Surtax on Item 18 (see Instruction 21)				8550.
46.	Tax on Net Income (total of Items 42, 43, 44, and 45)			$	12512.
47.	Adjustment for Capital Gain or Loss (12½% of Column 9, Schedule D)				
48.	Total of or Difference between Items 46 and 47			$	12512.
49.	Less Credit of 25% of Tax on Earned Net Income (Item 30)				130.
50.	Total Tax (Item 48 minus Item 49)			$	12382.
51.	Less Income Tax Paid at Source				
52.	Income and Profits Taxes paid to a foreign country or U. S. possession				
53.	Balance of Tax (Item 50 minus Items 51 and 52)			$	12382.

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements (if any), has been examined by me, and to the best of my knowledge and belief is a true and complete return made in good faith for the taxable year as stated, pursuant to the Revenue Act of 1928, and the Regulations issued under authority thereof.

(If return is made by agent, the reason therefor must be stated on the line below)

Sworn to and subscribed before me this 23rd day of February, 1929.

Mrs. Jos. Kemmerling
(Signature of individual or agent)

NOTARIAL SEAL

Dan Hanlon, Notary Public.
(Signature of officer administering oath) (Title)

(Address of agent)

An amended return must be marked "Amended" at top of return

Checks and drafts will be accepted only if payable at par

[Endorsed]: Filed Dec. 29, 1941.

(Testimony of Dan O'Hanlon.)

Mr. Mitchell: Then the individual income tax return of Mr. Kammerdiner for the year 1929.

The Clerk: 28.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 28.")

DEFENDANT'S EXHIBIT NO. 28

Form 1040
TREASURY DEPARTMENT
Internal Revenue Service

(Auditor's Stamp)

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES FROM SALARIES OR WAGES OF MORE THAN $5,000
AND INCOMES FROM BUSINESS, PROFESSION, RENTS, OR SALE OF PROPERTY

For Calendar Year 1929

File This Return With the Collector of Internal Revenue for Your District on or Before March 15, 1930

Do Not Write in These Spaces

File Code 1496

Serial Number

(Cashier's Stamp)

RECEIVED
WILMINGTON

Cash Check M. O. Form of Ind.
If Not Paid

$ 3690.04

Carded

PRINT NAME AND ADDRESS PLAINLY BELOW

J. [illegible] Lee
(Name)

227 [illegible]lard Ave
(Street and number, or rural route)

Los Angeles, Los Angeles, California
(Post office) (County) (State)

Occupation Partner - Joint Co. - Motor Car Business

1. Are you a citizen or resident of the United States? Yes
2. If you filed a return for 1928, to what Collector's office was it sent? Los Angeles.
3. Is this a joint return of husband and wife? No.
4. State name of husband or wife if a separate return was made and the Collector's office where it was sent [illegible] Los Angeles
5. Were you married and living with husband or wife on the last day of your taxable year? Yes
6. If not, were you on the last day of your taxable year supporting in your household one or more persons closely related to you?
7. If your status in respect to questions 5 and 6 changed during the year, state date and nature of change
8. How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support were receiving their chief support from you on the last day of your taxable year? 3-1 Taken by wife.

Line and Instruction No.	INCOME (State name and address of employer)	Amount received	Expenses paid (Explain in Sched. F)
1.	Salaries, Wages, Commissions, etc. (From Schedule A) [illegible] Motor Car Business Sales	NOT INVESTIGATED	
2.	Income from Business or Profession. (From Schedule B)		
3.	Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest on tax-free covenant bonds)		
4.	Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source		
5.	Income from Partnerships. (State name and address) [illegible] Partnership Return, Partnership as Corp. [illegible] Per return submitted	7786.08	
6.	Income from Fiduciaries. (State name and address)		
7.	Rents and Royalties. (From Schedule B)		
8.	Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)		
9.	Dividends on Stock of Domestic Corporations [illegible] above joint return.	804.13	
10.	Taxable Interest on Liberty Bonds, etc. (From Schedule E)		
11.	Other Income (including dividends on stock of foreign corporations). (State nature of income) (a)		
	(b)		
12.	TOTAL INCOME IN ITEMS 1 TO 11		$ 8,357.70
	DEDUCTIONS		
13.	Interest Paid		$
14.	Taxes Paid. (Explain in Schedule F)		
15.	Losses by Fire, Storm, etc. (Explain in Table at foot of page 2)		
16.	Bad Debts. (Explain in Schedule F)		
17.	Contributions. (Explain in Schedule F)		
18.	Other Deductions Authorized by Law. (Explain in Schedule F)		
19.	TOTAL DEDUCTIONS IN ITEMS 13 TO 18		$
20.	NET INCOME (Item 12 minus Item 19)		$ 8,357.70

FIELD

AUG 20 1930

EARNED INCOME CREDIT		COMPUTATION OF TAX (See Instruction 22)			
21. Earned Income (not over $30,000)	$ 1967.50	33. Net Income (Item 20 above)	$ 8,357.70	44. Normal Tax (1½% of Item 40)	$ 20.00
22. Less Personal Exemption and Credit for Dependents	2550.00	34. Less: Dividends (Item 9)	$ 804.13	45. Normal Tax (3% of Item 42)	80.00
23. Balance (Item 21 minus 22)	$ 1721.50	35. Interest on Liberty Bonds, etc. (Item 10)		46. Normal Tax (5% of Item 43)	3480.14
24. Amount taxable at 1½% (not over $4,000)	$ 4000.00	36. Credit for Dependents	800.00	47. Surtax on Item 20 (see Instruction 23)	3427.83
25. Amount taxable at 3% (not over $4,000)	4000.00	37. Personal Exemption	1750.00	48. Tax on Net Income (total of Items 44 to 47)	11347.97
26. Amount taxable at 5% (balance over $8,000 of Item 23)	9121.50	38. Total of Items 34 to 37	$ 3354.13	49. Tax on Capital Gain or Loss (12½% of Col. 8, Sched. D)	14928.10
27. Normal Tax (1½% of Item 24)	$ 20.00	39. Balance (Item 33 minus 38)	$ 5,003.57	50. Total of or difference between Items 48 and 49	14928.10
28. Normal Tax (3% of Item 25)	80.00	40. Amount taxable at 1½% (not over $4,000)	4,000.00	51. Less Credit of 25% of Tax on Earned Income (Item 32)	167.93
29. Normal Tax (5% of Item 26)	364.86	41. Balance (Item 39 minus 40)	$ 1,003.57	52. Total Tax (Item 50 minus 51)	14760.17
30. Surtax on Item 21	206.86	42. Amount taxable at 3% (not over $4,000)	4,000.00	53. Less Income Tax Paid at Source	
31. Tax on Earned Net Income (total of Items 27 to 30)	$ 671.72	43. Amount taxable at 5% (Item 41 minus Item 42)	$ 87,001.57	54. Income Tax paid to a foreign country or U. S. possession	
32. Credit of 25% of Tax (not over 25% of Items 30, 44, 45, and 46)	$ 167.93			55. Balance of Tax (Item 52 minus Items 53 and 54)	$ 14760.17

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements, has been examined by me, and to the best of my knowledge and belief, is a true and complete return made in good faith for the taxable year stated, pursuant to the Revenue Act of 1928 and the Regulations issued thereunder.

(If return is made by agent, the record thereby must be stated on this line)

Sworn to and subscribed before me this 5th day of March, 1930.

J. [illegible]
(Signature of individual or agent)

NOTARIAL SEAL

[illegible]
(Signature of officer administering oath)

, Notary Public.
(Title)

(Address of agent)

An amended return must be marked "Amended" at top of return. Checks and drafts will be accepted only if payable at par

[Endorsed]: Filed Dec. 29, 1941.

81

DEFENDANT'S EXHIBIT NO. 29

TREASURY DEPARTMENT
Int. Rev. Service

(Auditor's Stamp)

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES FROM SALARIES OR WAGES OF MORE THAN $5,000
AND INCOMES FROM BUSINESS, PROFESSION, RENTS, OR SALE OF PROPERTY

For Calendar Year 1929

File This Return With the Collector of Internal Revenue for Your District on or Before March 15, 1930

Do Not Write in These Spaces

File No. 1496

Serial Number 301467

(Auditor's Stamp)

REMITTANCE RECEIVED
MAR 12

Cash Check or M.O. Received
$ 3664.26

PRINT NAME AND ADDRESS PLAINLY BELOW

Mrs. Jas. Kesserdiner
(Name)

237 S. Highland Ave
(Street and number, or rural route)

Los Angeles, Los Angeles, Calif..
(Post office) (County) (State)

Occupation Partner or Joint Owner in Notary Jar Business.

1. Are you a citizen or resident of the United States? Yes
2. If you filed a return for 1928, to what Collector's office was it sent? Los Angeles
3. Is this a joint return of husband and wife? No.
4. State name of husband or wife if a separate return was made and the Collector's office where it was sent. J. Kesserdiner, to Los Angeles.
5. Were you married and living with husband or wife on the last day of your taxable year? Yes
6. If not, were you on the last day of your taxable year supporting in your household one or more persons closely related to you?
7. If your status in respect to questions 5 and 6 changed during the year, state date and nature of change.
8. How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support were receiving their chief support from you on the last day of your taxable year?

Item and Instruction No.	INCOME	Amount received	Expenses paid (Explain in Schedule F)	NOT INVESTIGATED
1.	Salaries, Wages, Commissions, etc. (State name and address of employer) From Joint A/c or Partnership as below		$ 19671.50	
2.	Income from Business or Profession. (From Schedule A)			
3.	Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest on tax-free covenant bonds)			
4.	Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source			
5.	Income from Partnerships. (State name and address) Mr. & Mrs. Jas. Kesserdiner, SP Community or Partnership as per return submitted		77881.08	
6.	Income from Fiduciaries. (State name and address)			
7.	Rents and Royalties. (From Schedule B)			
8.	Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)			
9.	Dividends on Stock of Domestic Corporations From above joint return		804.12	
10.	Taxable Interest on Liberty Bonds, etc. (From Schedule E)			
11.	Other Income (including dividends on stock of foreign corporations). (State nature of income) (a)			
	(b)			
12.	TOTAL INCOME IN ITEMS 1 TO 11			$ 98,357.70
	DEDUCTIONS			
13.	Interest Paid		$	
14.	Taxes Paid. (Explain in Schedule F)			
15.	Losses by Fire, Storm, etc. (Explain in Table at foot of page 2)			
16.	Bad Debts. (Explain in Schedule F)			
17.	Contributions. (Explain in Schedule F) Christian Science Covenant		500.00	
18.	Other Deductions Authorized by Law. (Explain in Schedule F)			
19.	TOTAL DEDUCTIONS IN ITEMS 13 TO 18			$ 500.00
20.	NET INCOME (Item 12 minus Item 19)			$ 97,857.70

FIELD

AUG 20

EARNED INCOME CREDIT		COMPUTATION OF TAX (See Instruction 33)			
21. Earned Income (not over $30,000)	$ 19671.50	33. Net Income (Item 20 above)	$ 97857.70	44. Normal Tax (1½% of Item 40)	$ 20.00
22. Less Personal Exemption and Credit for Dependents	2150.00	34. Less: Dividends (Item 9)	$ 804.12	45. Normal Tax (3% of Item 42)	80.00
23. Balance (Item 21 minus 22)	$ 17521.50	35. Interest on Liberty Bonds, etc. (Item 10)		46. Normal Tax (5% of Item 43)	3478.14
24. Amount taxable at 1½% (not over $4,000)	$ 4000.00	36. Credit for Dependents	400.00	47. Surtax on Item 20 (see Instruction 22)	11652.93
25. Amount taxable at 3% (not over $4,000)	4000.00	37. Personal Exemption	1750.00	48. Tax on Net Income (total of Items 44 to 47)	14829.97
26. Amount taxable at 5% (balance over $8,000 of Item 22)	9521.50	38. Total of Items 34 to 37	$ 2954.12	49. Tax on Capital Gain or Loss (12½% of Col. 8, Sched. D)	
27. Normal Tax (1½% of Item 24)	$ 20.00	39. Balance (Item 33 minus 38)	$ 94903.58	50. Total of or difference between Items 48 and 49	14829.97
28. Normal Tax (3% of Item 25)	80.00	40. Amount taxable at 1½% (not over $4,000)	4000.00	51. Less Credit of 25% of Tax on Earned Income (Item 32)	171.92
29. Normal Tax (5% of Item 26)	380.84	41. Balance (Item 39 minus 40)	$ 90903.58	52. Total Tax (Item 50 minus 51)	14657.05
30. Surtax on Item 21	206.86	42. Amount taxable at 3% (not over $4,000)	4000.00	53. Less Income Tax Paid at Source	
31. Tax on Earned Net Income (total of Items 27 to 30)	$ 687.70	43. Amount taxable at 5% (Item 41 minus Item 42)	86903.58	54. Income Tax paid to a foreign country or U. S. possession	
32. Credit of 25% of Tax (not over 25% of Items 20, 44, 45, and 46)	$ 171.92			55. Balance of Tax (Item 52 minus Items 53 and 54)	14657.05

3664.26

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements, has been examined by me, and to the best of my knowledge and belief, is a true and complete return made in good faith for the taxable year stated, pursuant to the Revenue Act of 1928 and the Regulations issued thereunder.

(If return is made by agent, the powers thereof must be stated on this line)

Sworn to and subscribed before me this 8th day of March, 1930.

Mrs. Jas. Kesserdiner
(Signature of individual or agent)

NOTARIAL SEAL

Dan O'Farrell, Notary Public.
(Signature of officer administering oath) (Title)

(Address of agent)

An amended return must be marked "Amended" at top of return. Checks and drafts will be accepted only if payable at par.

[Endorsed]: Filed Dec. 29, 1941.

(Testimony of Dan O'Hanlon.)

Mr. Mitchell: Then the individual income tax return of Mrs. Kammerdiner for the year 1930.

The Clerk: 30.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 30.")

DEFENDANT'S EXHIBIT NO. 30

Form 1040
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

(Auditor's Stamp)

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES FROM SALARIES OR WAGES OF MORE THAN $5,000
AND INCOMES FROM BUSINESS, PROFESSION, RENTS, OR SALE OF PROPERTY

For Calendar Year 1930

File This Return With the Collector of Internal Revenue for Your District on or Before March 15, 1931

Do Not Write in These Spaces
File No. 1497
Serial Number 302012
District

RECEIVED WITH REMITTANCE
MAR 16 1931
COLLECTOR OF INT. REV
6th DISTRICT OF CAL

Cash | Check | M. O. | Cert. of Ind. | First Payment
$ 66

PRINT NAME AND ADDRESS PLAINLY BELOW

MYRTLE B. HAMMERDINGER
(Name)

237 So. Highland Ave.,
(Street and number, or rural route)

510056 LOS ANG LES, L.A. California
(Post office) (County) (State)

Occupation

1. Are you a citizen or resident of the United States? Yes
2. If you filed a return for 1929, to what Collector's office was it sent? 6th. Dist. Calif.
3. Is this a joint return of husband and wife? No
4. State name of husband or wife if a separate return was made and the Collector's office where it was sent Jas. A. Hammerdinger 6th. Dist. Calif.
5. Were you married and living with husband or wife on the last day of your taxable year? Yes
6. If not, were you on the last day of your taxable year supporting in your household one or more persons closely related to you?
7. If your status in respect to questions 5 and 6 changed during the year, state date and nature of change No change
8. How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support were receiving their chief support from you on the last day of your taxable year? Three

Item and Instruction No.	INCOME	Amount received	Expenses paid (Explain in Schedule F)					
1.	Salaries, Wages, Commissions, etc. (State name and address of employer)	$	$	$				
2.	Income from Business or Profession. (From Schedule A)							
3.	Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest on tax-free covenant bonds)							
4.	Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source							
5.	Income from Partnerships. (State name and address)							
6.	Income from Fiduciaries. (State name and address)							
7.	Rents and Royalties. (From Schedule B)							
8.	Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)							
9.	Taxable Interest on Liberty Bonds, etc. (From Schedule E)							
10.	Dividends on Stock of Domestic Corporations							
11.	Other Income (including dividends on stock of foreign corporations). (State nature of income)							
	(a)							
	(b)							
12.	TOTAL INCOME IN ITEMS 1 TO 11					$		
	DEDUCTIONS							
13.	Interest Paid			$				
14.	Taxes Paid. (Explain in Schedule F)							
15.	Losses by Fire, Storm, etc. (Explain in Table at foot of page 2)							
16.	Bad Debts. (Explain in Schedule F)							
17.	Contributions. (Explain in Schedule F)							
18.	Other Deductions Authorized by Law. (Explain in Schedule F)							
19.	TOTAL DEDUCTIONS IN ITEMS 13 TO 18					$		
20.	NET INCOME (Item 12 minus Item 19)		See Schedule Attached			$	33 890	79

EARNED INCOME CREDIT

21.	Earned Income (not over $30,000)	$ 8781	94
	Less: Personal Exemption and Credit for Dependents	2350	00
23.	Balance (Item 21 minus 22)	$ 6431	94
24.	Amount taxable at 1½% (not over $4,000)	$ 4000	00
25.	Amount taxable at 3% (not over $4,000)	2431	94
26.	Amount taxable at 5% (balance over $8,000 of Item 23)		
27.	Normal Tax (1½% of Item 24)	$ 60	00
28.	Normal Tax (3% of Item 25)	72	96
29.	Normal Tax (5% of Item 26)		
30.	Surtax on Item 21		
31.	Tax on Earned Net Income (total of Items 27 to 30)	$ 132	96
32.	Credit of 25% of Tax (not over 25% of Items 30, 44, 45, and 46)	$ 33	24

COMPUTATION OF TAX (See Instruction 33)

33.	Net Income (Item 20 above)		$ 33890	79	
34.	Liberty Bond Interest (Item 9)	$			
35.	Dividends (Item 10)	1985	29		
36.	Credit for Dependents				
37.	Personal Exemption	2350	00		
38.	Total of Items 34 to 37		4335	29	
39.	Balance (Item 33 minus 38)		$ 29555	50	
40.	Amount taxable at 1½% (not over $4,000)		4000	00	
41.	Balance (Item 39 minus 40)		$ 25555	50	
42.	Amount taxable at 3% (not over $4,000)		4000	00	
43.	Amount taxable at 5% (Item 41 minus 42)		$ 21555	50	
44.	Normal Tax (1½% of Item 40)		$ 60	00	
45.	Normal Tax (3% of Item 42)		120	00	
46.	Normal Tax (5% of Item 43)		1077	76	
47.	Surtax on Item 20 (see Instruction 28)		1210	17	
48.	Tax on Net Income (total of Items 44 to 47)		$ 2467	93	
49.	Tax on Capital Gain or Loss (12½% of Col. 8, Sched. D)				
50.	Total of or difference between Items 48 and 49		$ 2467	93	
51.	Less Credit of 25% of Tax on Earned Income (Item 32)		33	24	
52.	Total Tax (Item 50 minus 51)		$ 2434	71	
53.	Less Income Tax Paid at Source				
54.	Income Tax paid to a foreign country or U. S. possession				
55.	Balance of Tax (Item 52 minus Items 53 and 54)		$ 2434	71	

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements, has been examined by me, and to the best of my knowledge and belief, is a true and complete return made in good faith for the taxable year stated, pursuant to the Revenue Act of 1928 and the Regulations issued thereunder.

(If return is made by agent, the reason therefor must be stated on this line)

Sworn to and subscribed before me this 13 day of Mar, 1931.

Myrtle B. Hammerdinger
(Signature of taxpayer, individual or agent)

237 So. Highland Ave
(Address of agent)

NOTARIAL SEAL

(Signature of officer administering oath) (Title)

Amended return must be marked "Amended" at top of return. Checks and drafts will be accepted only if payable at par

J.A. KAMMERDINER - MYRTLE B. KAMMERDINER
LOS ANGELES, California — Year 1930.

ROTARY JAR OPERATIONS

INCOME:	Local rentals		$91,640.65	
	Texas rentals		1,725.00	
	Oklahoma rentals		675.00	
	Wyoming rentals		2,137.30	
	San Joaquin & Long Beach rentals		18,940.00	
	Foreign Sales		25,824.00	$138,942.95
DEDUCTIONS:	Cost of manufacturing and repairing Jars		24,506.24	
	General expense, advertising, legal exp.,trucking etc.		8,021.14	
	Salaries & Commissions paid		10,640.00	
	Amortization of patents - $2,520.00 @ 8%		201.60	
	14,750.00 @ 6-2/3%		983.33	
	Depreciation on Autos - 1,500.00 @ 25% - 9 mo.		296.88	
	2,000.00 @ 25% - 6 mo.		338.33	
	5,686.75 @ 25% 3/4 used in business		1,066.27	
	Auto Expense		2,067.75	46,123.54
	INCOME FROM JAR BUSINESS			$ 87,819.41

OLIVE HEIGHTS ORANGE RANCH

RECEIPTS:	Sale of Oranges		5,498.87	
DEDUCTIONS:	Expense of Operation, Labor, Water, Taxes, Fertilizer, etc.	$1,259.35		
	Depreciation on Grove: Trees $6000.00 @ 3%	180.00	1,439.35	
	INCOME FROM OLIVE HEIGHTS ORANGE RANCH			4,059.52

1/4 INTEREST IN YORBA LINDA ORANGE RANCH

RECEIPTS:			9,677.83	
DEDUCTIONS:	Taxes	441.57		
	Water	465.00		
	Fertilizer	759.74		
	Labor	1,230.35		
	Spraying	462.00		
	State Tax	5.88		
	Depreciation	212.00	3,582.54	
	NET INCOME		6,095.29	
	1/4 INTEREST IN YORBA LINDA ORANGE RANCH			1,523.82

INCOME FROM RENTALS

WHITTIER BLVD:	Rent Received		114.00	
	Repairs, Taxes & Insurance	198.14		
	Depreciation, Cost $3500.00 Rate 10%	350.00	548.14	
	NET LOSS WHITTIER BLVD. RENTAL			[illegible]
4861 CLINTON STREET:	Rents Received		450.00	
	Repairs, Taxes & Water	130.59		
	Depreciation, Cost $3000.00 Rate 6-2/3%	200.00	336.59	
	NET PROFIT 4861 CLINTON ST. RENTAL			113.41
	Royalties Received - $4.88 less 27½% depletion 1.34			3.54
	Interest Received			3,956.56
	Dividends Received			3,970.56

LOSS ON SALE OF STOCK:	Acquired	Cost	Sold	
Bolsa Chico Oil Stock	1926	$10,430.00	$[illegible]	[illegible]
GROSS INCOME				$93,903.72

DEDUCTIONS:	Taxes Paid		3,477.14	
	Contributions: Christian Science Movement		500.00	
	Loss: Investment in Congress Petroleum Corp. 1926 in hands of receiver - total loss		18,645.00	
	Investment in Citizens Trust & Savings Bank Trust B 5109, Oil Trust, well abandoned		3,500.00	
	TOTAL DEDUCTIONS			26,142.14
				$67,761.58
	1/2 J.A. Kammerdiner		33,880.79	
	1/2 Myrtle B.Kammerdiner		33,880.79	
			$67,761.58	

[Endorsed]: Filed Dec. 29, 1941.

DEFENDANT'S EXHIBIT NO. 31

T.M. 245

Form 1040
TREASURY DEPARTMENT
Internal Revenue Service
(Auditor's Stamp)

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES FROM SALARIES OR WAGES OF MORE THAN $5,000
AND INCOMES FROM BUSINESS, PROFESSION, RENTS, OR SALE OF PROPERTY

For Calendar Year 1930

File This Return With the Collector of Internal Revenue for Your District on or Before March 15, 1931

PRINT NAME AND ADDRESS PLAINLY BELOW

Do Not Write in These Spaces

File Code 1496

Serial Number 302011

District 6-Calif

RECEIVED WITH REMITTANCE
MAR 16 1931
COLLECTOR OF INT. REV
6th DISTRICT OF CAL

Cash Check M. O. Cert. of Ind.
First Payment
$

JAS. A. KAMMERDINER
(Name)

237 So. Highland Ave.
(Street and number, or rural route)

LOS ANG LES (Post office) L.A. (County) CALIFORNIA (State)

Occupation

1. Are you a citizen or resident of the United States? Yes
2. If you filed a return for 1929, to what Collector's office was it sent? 6th. Dist. Calif.
3. Is this a joint return of husband and wife? No
4. State name of husband or wife if a separate return was made and the Collector's office where it was sent. Myrtle B. Kammerdiner 6th. Dist. Calif.
5. Were you married and living with husband or wife on the last day of your taxable year? Yes
6. If not, were you on the last day of your taxable year supporting in your household one or more persons closely related to you?
7. If your status in respect to questions 5 and 6 changed during the year, state date and nature of change. No change
8. How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support were receiving their chief support from you on the last day of your taxable year? Three

Item and Instruction No.	INCOME	Amount received	Expenses paid (Explain on Schedule F)					
1.	Salaries, Wages, Commissions, etc. (State name and address of employer)	$	$					
2.	Income from Business or Profession. (From Schedule A)							
3.	Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest on tax-free covenant bonds)							
4.	Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source							
5.	Income from Partnerships. (State name and address)							
6.	Income from Fiduciaries. (State name and address)							
7	Rents and Royalties. (From Schedule B)							
8.	Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)							
9.	Taxable Interest on Liberty Bonds, etc. (From Schedule E)							
10.	Dividends on Stock of Domestic Corporations							
11.	Other Income (including dividends on stock of foreign corporations). (State nature of income)							
	(a)							
	(b)							
12.	TOTAL INCOME IN ITEMS 1 TO 11							
	DEDUCTIONS							
13.	Interest Paid		$					
14	Taxes Paid. (Explain in Schedule F)							
15.	Losses by Fire, Storm, etc. (Explain in Table at foot of page 3)							
16.	Bad Debts. (Explain in Schedule F)							
17.	Contributions. (Explain in Schedule F)							
18.	Other Deductions Authorized by Law. (Explain in Schedule F)							
19.	TOTAL DEDUCTIONS IN ITEMS 13 TO 18							
20.	NET INCOME (Item 12 minus Item 19)		See Schedule attached			$	33	890 79

EARNED INCOME CREDIT

21.	Earned Income (not over $30,000)	$ 6781	94
22.	Less Personal Exemption and Credit for Dependents	2350	00
23.	Balance (Item 21 minus 22)	$ 6431	94
24.	Amount taxable at 1½% (not over $4,000)	$ 4000	00
25.	Amount taxable at 3% (not over $4,000)	2431	94
26.	Amount taxable at 5% (balance over $8,000 of Item 23)		
27.	Normal Tax (1½% of Item 24)	$ 60	00
28.	Normal Tax (3% of Item 25)	72	96
29.	Normal Tax (5% of Item 26)		
30.	Surtax on Item 21		
31.	Tax on Earned Net Income (total of Items 27 to 30)	$ 132	96
32.	Credit of 25% of Tax (not over 25% of Items 30, 44, 45, and 46)	$ 33	24

COMPUTATION OF TAX (See Instruction 23)

33.	Net Income (Item 20 above)		$ 33890	79	
34.	Less: Liberty Bond Interest (Item 9)	$			
35.	Dividends (Item 10)	1985	29		
36.	Credit for Dependents	1200	00		
37.	Personal Exemption	1150	00		
38	Total of Items 34 to 37		4335	29	
39.	Balance (Item 33 minus 38)		$ 29555	50	
40.	Amount taxable at 1½% (not over $4,000)		4000	00	
41.	Balance (Item 39 minus 40)		$ 25555	50	
42.	Amount taxable at 3% (not over $4,000)		4000	00	
43.	Amount taxable at 5% (Item 41 minus 42)		$ 21555	50	
44.	Normal Tax (1½% of Item 40)			$ 60	00
45.	Normal Tax (3% of Item 42)			120	00
46.	Normal Tax (5% of Item 43)			1077	78
47.	Surtax on Item 20 (see Instruction 23)			1210	17
48.	Tax on Net Income (total of Items 44 to 47)			$ 2467	95
49.	Tax on Capital Gain or Loss (12½% of Col. 8, Sched. D)				
50.	Total of or difference between Items 48 and 49			$ 2467	95
51.	Less Credit of 25% of Tax on Earned Income (Item 32)			33	24
52.	Total Tax (Item 50 minus 51)			$ 2434	71
53.	Less Income Tax Paid at Source				
54.	Income Tax paid to a foreign country or U. S. possession				
55.	Balance of Tax (Item 52 minus Items 53 and 54)			$ 2434	71

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements, has been examined by me, and to the best of my knowledge and belief, is a true and complete return made in good faith for the taxable year stated, pursuant to the Revenue Act of 1928 and the Regulations issued thereunder.

(If return is made by agent, the reason therefor must be stated on this line)

Sworn to and subscribed before me this ____ day of ____, 1931.

Jas A Kammerdiner
(Signature of individual or agent)

NOTARIAL SEAL

(Signature of officer administering oath) (Title) (Address of agent)

An amended return must be marked "Amended" at top of return. Checks and drafts will be accepted only if payable at par

5—18411

(Testimony of Dan O'Hanlon.)

JAS. A. KAMMERDINER—MYRTLE B. KAMMERDINER
Los Angeles, California
Year 1930.

Rotary Jar Operations

Income:			
Local rentals		$91,640.85	
Texas rentals		1,725.00	
Oklahoma rentals		675.00	
Wyoming rentals		2,137.50	
San Joaquin & Long Beach rentals		13,940.00	
Foreign Sales		25,824.60	$135,942.95
Deductions:			
Cost of manufacturing and repairing Jars		24,508.24	
General expense, advertising, legal exp., trucking, etc.		8,021.14	
Salaries and commissions paid		10,640.00	
Amortization of patents—			
$2,520.00 @ 8%		201.60	
14,750.00 @ 6⅔%		983.33	
Depreciation on Autos—			
1,500.00 @ 25%—9½ mo		296.88	
2,030.00 @ 25%—8 mo		338.33	
5,686.75 @ 25% ¾ used in business		1,066.27	
Auto Expense		2,067.75	48,123.54
Income from jar business			$ 87,819.41

Olive Heights Orange Ranch

Receipts:			
Sale of Oranges		5,496.87	
Deductions:			
Expense of Operation, Labor, Water, Taxes, Fertilizer, etc.	$1,259.35		
Depreciation on Grove: Trees $6000.00 @ 3%	180.00	1,439.35	
Income from Olive Heights Orange Ranch			4,059.52

(Testimony of Dan O'Hanlon.)

JAS. A. KAMMERDINER—MYRTLE B. KAMMERDINER
Los Angeles, California
Year 1930.

Rotary Jar Operations

Income:		
Local rentals	$91,640.85	
Texas rentals	1,725.00	
Oklahoma rentals	675.00	
Wyoming rentals	2,137.50	
San Joaquin & Long Beach rentals	13,940.00	
Foreign Sales	25,824.60	$135,942.95
Deductions:		
Cost of manufacturing and repairing Jars	24,508.24	
General expense, advertising, legal exp., trucking, etc.	8,021.14	
Salaries and commissions paid	10,640.00	
Amortization of patents—		
$2,520.00 @ 8%	201.60	
14,750.00 @ 6⅔%	983.33	
Depreciation on Autos—		
1,500.00 @ 25%—9½ mo.	296.88	
2,030.00 @ 25%—8 mo.	338.33	
5,686.75 @ 25% ¾ used in business	1,066.27	
Auto Expense	2,067.75	48,123.54
Income from jar business		$ 87,819.41

Olive Heights Orange Ranch

Receipts:			
Sale of Oranges		5,496.87	
Deductions:			
Expense of Operation, Labor, Water, Taxes, Fertilizer, etc.	$1,259.35		
Depreciation on Grove: Trees $6000.00 @ 3%	180.00	1,439.35	
Income from Olive Heights Orange Ranch			4,059.52

(Testimony of Dan O'Hanlon.)

Jas. A. Kammerdiner—Myrtle B. Kammerdiner—
Year 1930—(Continued)

¼ Interest in Yorba Linda Orange Ranch

Receipts:		9,677.83	
Deductions:			
Taxes	441.57		
Water	465.00		
Fertilizer	759.74		
Labor	1,236.35		
Spraying	462.00		
State Tax	5.88		
Depreciation	212.00	3,582.54	
Net Income		6,095.29	
¼ interest in Yorba Linda Ranch			1,523.82

Income From Rentals

Whittier Blvd:			
Rents Received		114.00	
Repairs, Taxes & Insurance	198.14		
Depreciation, Cost $3500.00 Rate 10%	350.00	548.14	
Net from Whittier Blvd. Rental			434.14
4861 Clinton Street:			
Rents Received		450.00	
Repairs, Taxes & Water	136.59		
Depreciation, Cost $3000.00 Rate 6⅔%	200.00	336.59	
Net Profit 4861 Clinton St. Rental			113.41
Royalties Received—$4.88 less 27½% depletion $1.34			3.54
Interest Received			3,958.58
Dividends Received			3,970.58

(Testimony of Dan O'Hanlon.)

Jas. A. Kammerdiner—Myrtle B. Kammerdiner—
Year 1930—(Continued)

Loss on Sale of Stock:

	Acquired	Cost	Sold	
Bolsa Chico Oil Stock	1928	$10,430.00	$3,319.00	7,111.00
Gross Income				93,903.72
Deductions:				
Taxes Paid			3,477.14	
Contributions: Christion Science Movement			500.00	
Loss: Investment in Congress Petroleum Corp. 1928 in hands of receiver—total loss			18,645.00	
Investment in Citizens Trust & Savings Bank Trust B 5109, Oil Trust, well abandoned			3,500.00	
Total Deductions				26,122.14
				$67,781.58
½ J. A. Kammerdiner			33,890.79	
½ Myrtle B. Kammerdiner			33,870.79	
			$67,781.58	

[Endorsed]: Filed: Dec. 29, 1941.

Mr. Mitchell: Then the individual income tax return of Mr. Kammerdiner for the year 1934.

The Clerk: That will be 32.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 32.")

DEFENDANT'S EXHIBIT NO. 32

FORM 1040 MUST BE FILED WITH THIS RETURN

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES FROM SALARIES OR WAGES OF MORE THAN $5,000 AND INCOMES FROM BUSINESS, PROFESSION, RENTS, OR SALE OF PROPERTY

For Calendar Year 1934

or fiscal year beginning, 1934, and ended, 1935

File This Return Not Later Than the 15th Day of the Third Month Following the Close of the Taxable Year

T. B. S.

Do Not Write in These Spaces

File Code 1496

Serial Number 809964

District Calif.

(Cashier's Stamp)

Cash Check M.O. Dept. of Ind.

First Payment

$

(Cashier's Stamp) 4393

C A Dewey
Los Angeles
JAN 18 1935
June 510217

PRINT NAME AND ADDRESS PLAINLY BELOW

JAS. A. KAMMERDINER
(Name) (If joint return, give first name and initial and wife, if this is a joint return)
237 South Highland Avenue
(Street and number, or rural route)
Los Angeles, California
(Post office) (County) (State)

1. State whether you are (a) a citizen of the United States, or (b) a resident alien: Citizen
2. If you filed a return for the preceding year, in which Collector's office was it sent? 6th, Calif.
3. Were you married and living with husband or wife during your taxable year? Yes
4. Is this a joint return of husband and wife? No
5. State name of husband or wife if a separate return was made and the Collector's office to which it was sent. 6th, Calif. Myrtle Kammerdiner
6. If not married, were you during your taxable year supporting in your household one or more persons closely related to you?
7. How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support received their chief support from you during your taxable year? One

8. If your status in respect to question 3, 6, or 7 changed during the year, state date and nature of change
9. State whether your books are kept on cash or accrual basis Cash
10. OCCUPATIONAL CLASSIFICATION OF ITEM 1, Salaries, Wages, Commissions, Fees, etc. Check (✓) in proper block that ONE occupation from which you received principal amount in Item 1.
- ☐ Physician, surgeon, or dentist.
- ☐ Teacher, or school administrator.
- ☐ Judge or lawyer.
- ☐ Clergyman or religious worker.
- ☐ Technical engineer, chemist, or architect.
- ☐ Corporation executive or manager.
- ☐ Other professional (Specify)
- ☐ All other (Specify)

11. Did any person or persons advise you in respect of any question or matter affecting any item or schedule of this return, or assist or advise you in the preparation of this return, or actually prepare this return for you? 1934 (Answer "yes" or "no") If so, give the name and address of each person or persons and state the nature and extent of the assistance or advice received by you and the items or schedules in respect of which the assistance or advice was received, if this return was actually prepared by any person or persons other than yourself, state the source of the information reported in this return and the manner in which it was furnished to or obtained by such person or persons Office of Claude I. Parker from data submitted by taxpayer
12. Did you make a return of information on Forms 1096 and 1099 (see Instruction 31) for the calendar year 1934? (Answer "yes" or "no") Yes

ATTACH REMITTANCE HERE

Item and Instruction No.	INCOME	Amount received	Expenses paid (Explain in Schedule F)
1.	Salaries, Wages, Commissions, Fees, etc. (State name and address of employer)	$	$
2.	Income (or Loss) from Business or Profession. (From Schedule A) (State kind of business)		
3.	Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest on tax-free covenant bonds)		
4.	Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source		
5.	Income (or Loss) from Partnerships, Syndicates, Pools, etc. (State name, address, and kind of business) Dividends	635 02	
	Kammerdiner Rotary Jar Company, Los Angeles, California (Earned	4 310 44	
	(Other	16 606 74	
6.	Income from Fiduciaries. (State name and address)		
7.	Rents and Royalties. (From Schedule B)		
8.	Capital Gain (or Loss). (From Schedule C)		
9.	Taxable Interest on Liberty Bonds, etc. (From Schedule D)		
10.	Dividends on Stock of: (a) Domestic Corporations subject to taxation under Title I of 1934 Act		
	(b) Domestic Corporations not subject to taxation under Title I of 1934 Act		
	(c) Foreign Corporations		
11.	Other Income. (State nature) (Use separate schedule, if necessary)		
12.	TOTAL INCOME IN ITEMS 1 TO 11		$ 21 552 20

	DEDUCTIONS	
13.	Interest Paid	$
14.	Taxes Paid. (Explain in Schedule F)	
15.	Losses by Fire, Storm, etc. (Explain in table at foot of page 2)	
16.	Bad Debts. (Explain in Schedule F)	
17.	Contributions. (Explain in Schedule F)	
18.	Other Deductions Authorized by Law. (Explain in Schedule F)	
19.	TOTAL DEDUCTIONS IN ITEMS 13 TO 18	
20.	NET INCOME (Item 12 minus Item 19)	$ 21 552 20

COMPUTATION OF TAX (See Instruction 23)

21.	Net income (Item 20 above)		$	21	552	20	
22.	Less: Personal exemption	$ 1,050 00					
23.	Credit for Dependents	400 00		1	450	00	
24.	Balance (Surtax net income)		$	20	102	20	
25.	Less: Interest on Liberty bonds, etc. (Item 9)	$					
26.	Dividends. (Item 10 (a))	635 02					
27.	Earned income credit. (See Instruction 22)	431 04		1	066	06	
28.	Balance subject to normal tax		$	19	036	14	
29.	Normal tax (4% of Item 28)		$		761	45	
30.	Surtax on Item 24. (See Instruction 23)			1	275	33	
31.	Total tax (Item 29 plus Item 30)		$	2	036	78	
32.	Less: Income tax paid at source (2% of Item 4)	$ 4 50					
33.	Income tax paid to a foreign country or U.S. possession				4	50	
34.	Balance of Tax. (Item 31 minus Items 32 and 33)			2	032	28	

AFFIDAVIT (See Instruction 27)

I/we swear (or affirm) that this return (including its accompanying schedules and statements, if any) has been examined by me/us, and to the best of my/our knowledge and belief is a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1934 and the Regulations issued thereunder.

Jas. A. Kammerdiner
(If return is made by agent, the name should be entered on the line above)

Sworn to and subscribed by Jas A Kammerdiner before me this 12 day of Feb 1935.

NOTARIAL SEAL

Marguerite Mage
(Signature and title or official designation of officer administering oath)

(Address of agent if return is made by agent)

AFFIDAVIT (See Instruction 27)

I/we swear (or affirm) that I/we prepared this return for the person or persons named herein and that the return (including its accompanying schedules and statements, if any) is a true, correct, and complete statement of all the information respecting the income tax liability of the person or persons for whom this return has been prepared of which I/we have any knowledge.

Sworn to and subscribed before me this 13 day of Feb 1935

Willis N. Stinson
(Signature of person preparing the return)

NOTARIAL SEAL

Marguerite Mage
(Signature of officer administering oath)

(Title)

(Name of firm or corporation, if any)

p—16880 U. S. GOVERNMENT PRINTING OFFICE 1934

[Endorsed]: Filed Dec. 29, 1941.

(Testimony of Dan O'Hanlon.)

Mr. Mitchell: The individual income tax return of Mrs. Kammerdiner for the year 1934.

The Clerk: 33.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 33.")

(Testimony of Dan O'Hanlon.)

Mr. Mitchell: The individual income tax return of Mrs. Kammerdiner for the year 1934.

The Clerk: 33.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 33.")

DEFENDANT'S EXHIBIT NO. 33

FORM 1934 MUST BE FILED WITH THIS RETURN

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES FROM SALARIES OR WAGES OF MORE THAN $5,000 AND INCOMES FROM BUSINESS, PROFESSION, RENTS, OR SALE OF PROPERTY

For Calendar Year 1934

or fiscal year beginning 1934, and ending 1935

File This Return Not Later Than the 15th Day of the Third Month Following the Close of the Taxable Year

Form 1040
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
(Collector's Stamp)
43 73
CALIF.
Los Angeles
JUN 13 1935

Do Not Write in These Spaces
File Code 1497
Serial Number 800965
District
(Collector's Stamp)
13
LOS ANGELES OFFICE
Cash Check M.O. Date of Ind.
First Payment
$

PRINT NAME AND ADDRESS PLAINLY BELOW

MRS. MYRTLE KAMMERDINER c/o James Kammerdiner
(Name) (If joint return, husband and wife, if this is a joint return)
237 So. Highland Avenue
(Street and number, or rural route)
Los Angeles, California
(Post office) (County) (State)

JUN 6 1936

1. State whether you are (a) a citizen of the United States, or (b) a resident alien—Citizen
2. If you filed a return for the preceding year, in which Collector's office was it filed? 6th Calif.
3. Were you married and living with husband or wife during your taxable year? Yes
4. Is this a joint return of husband and wife? No
5. State name of husband or wife if a separate return was made and the Collector's office to which it was sent 6th, Calif.
6. State name of dependent husband or wife if any Jas. A. Kammerdiner
7. If not married, were you during your taxable year supporting in your household one or more persons closely related to you?
8. How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support received their chief support from you during your taxable year?

9. If your status in respect to question 3, 4, or 7 changed during the year, state date and nature of change
9. State whether your books are kept on cash or accrual basis Cash
10. OCCUPATIONAL CLASSIFICATION OF ITEM 1, Salaries, Wages, Commissions, Fees, etc. Check (✓) in proper block that ONE occupation from which you received principal amount in Item 1.
- ☐ Physician, surgeon, or dentist.
- ☐ Teacher, or school administrator.
- ☐ Judge or lawyer.
- ☐ Clergyman or religious worker.
- ☐ Technical engineer, chemist, or architect.
- ☐ Corporation executive or manager.
- ☐ Other professional (Specify)
- ☐ All other (Specify)

11. Did any person or persons advise you in respect of any question or matter affecting any item or schedule of this return, or assist or advise you in the preparation of this return, or actually prepare this return for you? Yes. If so, give the name and address of each person or persons and state the nature and extent of the assistance or advice rendered by you and the items or schedules in respect of which the assistance or advice was received; if this return was actually prepared by any person or persons other than yourself, state the source of the information reported in this return and the manner in which it was furnished to or obtained by such person or persons Office of Claude I. Parker name from data submitted by taxpayer.
12. Did you make a return of information on Forms 1096 and 1099 (see Instruction 31) for the calendar year 1934? (Answer "yes" or "no").

ATTACH REMITTANCE HERE

Item and Instruction No.	INCOME	Amount received	Expenses paid (Explain in Schedule F)					
1.	Salaries, Wages, Commissions, Fees, etc. (State name and address of employer)	$	$					
2.	Income (or Loss) from Business or Profession. (From Schedule A) (State kind of business)							
3.	Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest on tax-free covenant bonds)							
4.	Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source							
5.	Income (or Loss) from Partnerships, Syndicates, Pools, etc. (State name, address, and kind of business)	Dividends		635	02			
	Kammerdiner Rotary Jar Company, Los Angeles, California	(Earned		4 310	44			
6.	Income from Fiduciaries. (State name and address)	(Other		16 606	75			
7.	Rents and Royalties. (From Schedule B)							
8.	Capital Gain (or Loss). (From Schedule C)							
9.	Taxable Interest on Liberty Bonds, etc. (From Schedule D)							
10.	Dividends on Stock of: (a) Domestic Corporations subject to taxation under Title I of 1934 Act							
	(b) Domestic Corporations not subject to taxation under Title I of 1934 Act							
	(c) Foreign Corporations							
11.	Other Income. (State nature) (Use separate schedule, if necessary)							
12.	TOTAL INCOME IN ITEMS 1 TO 11					$	21 552	21
	DEDUCTIONS							
13.	Interest Paid	$						
14.	Taxes Paid. (Explain in Schedule F)							
15.	Losses by Fire, Storm, etc. (Explain in table at foot of page 2)							
16.	Bad Debts. (Explain in Schedule F)							
17.	Contributions. (Explain in Schedule F)							
18.	Other Deductions Authorized by Law. (Explain in Schedule F)							
19.	TOTAL DEDUCTIONS IN ITEMS 13 TO 18							
20.	NET INCOME (Item 12 minus Item 19)					$	21 552	21

From Input Filed with return

COMPUTATION OF TAX (See Instruction 23)

21.	Net income (Item 20 above)		$	21	552	21	29. Normal tax (4% of Item 28)	$	761 45
22.	Less: Personal exemption	$ 1,450 00					30. Surtax on Item 24. (See Instruction 23)		1 275 33
23.	Credit for Dependents			1	450	00	31. Total tax (Item 29 plus Item 30)	$	2 036 78
24.	Balance (Surtax net income)		$	20	102	21	32. Less: Income tax paid at source (2% of Item 4) $ 4 50		
25.	Less: Interest on Liberty bonds, etc. (Item 9)	$					33. Income tax paid to a foreign country or U.S. possession		4 50
26.	Dividends. (Item 10 (a))	635 02					34. Balance of Tax. (Item 31 minus Items 32 and 33)	$	2 032 28
27.	Earned income credit. (See Instruction 22)	431 04		1	066	06			
28.	Balance subject to normal tax		$	19	036	15			

AFFIDAVIT (See Instruction 27)

I/we swear (or affirm) that this return (including its accompanying schedules and statements, if any) has been examined by me/us, and to the best of my/our knowledge and belief is a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1934 and the Regulations issued thereunder.

Mrs Myrtle Kammerdiner
(Signature of taxpayer making oath)

Sworn to and subscribed before me this 13 day of June 1935.

Margueite Lodge
(Signature of officer administering oath)

Mrs Myrtle Kammerdiner
(Signature of person preparing this return, if other than taxpayer)

NOTARIAL SEAL

AFFIDAVIT (See Instruction 27)

I/we swear (or affirm) that I/we prepared this return for the person or persons named herein and that the return (including its accompanying schedules and statements, if any) is a true, correct, and complete statement of all the information respecting the income tax liability of the person or persons for whom this return has been prepared of which I/we have any knowledge.

Sworn to and subscribed before me this 13 day of June 1935

William D. Stevenson
(Signature of person preparing this return)

Margueite Lodge
(Signature of officer administering oath)

NOTARIAL SEAL

[Endorsed]: Filed Dec. 29, 1941.

(Testimony of Dan O'Hanlon.)

Mr. Mitchell: The individual income tax return of Mr. Kammerdiner for the whole of the year 1935. [128]

The Clerk: 34.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 34.")

360

DEFENDANT'S EXHIBIT NO. 34

FILED

FORM MARKED "DUPLICATE" MUST BE FILED WITH THIS ORIGINAL RETURN

Form 1040
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

(Auditor's Stamp)

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES FROM SALARIES OR WAGES OF MORE THAN $5,000 AND INCOMES FROM BUSINESS, PROFESSION, RENTS, OR SALE OF PROPERTY

For Calendar Year 1935

or fiscal year beginning, 1935, and ended, 1936

File This Return Not Later Than the 15th Day of the Third Month Following the Close of the Taxable Year

PRINT NAME AND ADDRESS PLAINLY BELOW

JAMES A. KAMMERDINER
(Name) (Each husband will make a separate return)
257 So. Highland Avenue
(Street and number, or rural route)
Los Angeles L.A. California
(Post office) (County) (State)

Do Not Write in These Spaces

File Code 1496
Serial Number 810830
District 8-C
(Collector's Stamp)
13
Cash Check M. O. Cert. of Ind.
$ 55 79

1. Are you a citizen of the United States, or (2) a resident alien? Citizen
2. If you filed a return for the preceding year to which Collector's office was it sent? 6th Dist. Calif.
3. Were you married and living with husband or wife during your taxable year? Wife died Apr. 4, 1935
4. Is this a joint return of husband and wife? Part
5. Name income of husband or wife if a separate return was made and the Collector's office to which it was sent. No
6. If married person (husband or wife) lived apart from husband or wife at any time during your taxable year, state name and address of husband or wife. Kammerdiner, and Est. Myrtle
7. How many dependent persons, other than husband or wife, under 18 years of age or incapable of self-support received their chief support from you during your taxable year? No
8. If your status in respect to questions 5, 6, or 7 changed during the year, state date and nature of change. None
9. State whether your books are kept on cash or accrual basis. Cash
10. Basis principal occupations or profession accounting for salaries, wages, commissions, fees, etc., in Item 1. -
11. Did you transfer to or receive from any one person money or property in excess of $5,000, during the calendar year 1935, without adequate and full consideration in money or money's worth? Yes
If so, did you file a gift tax return on Form 709 or an information return on Form 710? Yes
12. Did any person or persons advise you in respect of any question or matter affecting any item or schedule of this return, or assist or advise you in the preparation of this return, or antecedent papers this return for you? Yes If so, give the name and address of each person or persons and state the nature and extent of the assistance or advice rendered by you and the items or schedules in respect of which the assistance or advice was received, if this return was actually prepared by any person or persons other than yourself, state the source of the information reported in this return and the manner in which it was furnished to or obtained by such person or persons. Office of Claude I. Parker
13. Date return submitted by taxpayer. June 22 1936
14. Did you make a return of information on Forms 1096 and 1099 (see Instruction 30) for the calendar year 1935? (Answer "yes" or "no") -

ATTACH REMITTANCE HERE

Item and Instruction No.	INCOME	Amount received	Exemption paid (Outline in Schedule B)		
1.	Salaries, Wages, Commissions, Fees, etc. (State name and address of employer)			$ 5	727 25
	Earned Income Kammerdiner Rotary Jar Co., 237 So. Highland Ave., Los Angeles	$	$	1	686 13
2.	Net profit (or Loss) from Business or Profession. (From Schedule A) (State kind of business)				
3.	Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest on tax-free covenant bonds)				
4.	Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source: Kammerdiner Rotary Jar Co. 1941		28 8	337	89
5.	Income (or Loss) from Partnerships, Syndicates, Pools, etc. (Furnish name, address, and kind of business)			537	51
6.	Income from Fiduciaries. (Furnish name and address)				
7.	Rents and Royalties. (From Schedule B)				
8.	Capital Gain or Loss. (From Schedule C)				
9.	Taxable Interest on Liberty Bonds, etc. (From Schedule D) 237 So. Highland Ave., L.A.			511	08
10.	Dividends on Stock of: (a) Domestic Corporations subject to taxation under Title I of 1934 Act.			147	00
	(b) Domestic Corporations not subject to taxation under Title I of 1934 Act.				
	(c) Foreign Corporations.				
11.	Other Income. (State nature) (Use separate schedule, if necessary)				
12.	TOTAL INCOME IN ITEMS 1 TO 11			$ 37	066 87

RECEIVED
JUN 22 1936
LOS ANGELES DIVISION

DEDUCTIONS

13.	Interest Paid. (Explain in Schedule E)	$	
14.	Taxes Paid. (Explain in Schedule F)		
15.	Losses by Fire, Storm, etc. (Explain in table at foot of page)		
16.	Bad Debts (including bonds determined to be worthless during taxable year). (Explain in Schedule F)		
17.	Contributions. (Explain in Schedule F)		
18.	Other Deductions Authorized by Law (including stock determined to be worthless during taxable year). (Explain in Schedule F)		
19.	TOTAL DEDUCTIONS IN ITEMS 13 TO 18		
20.	NET INCOME. Item 12 minus Item 19		$ 37 066 87

COMPUTATION OF TAX (See Instruction 23)

21.	Net income. Item 20 above		$ 37 066 87	29.	Normal tax (4% of Item 28)	$ 1 379 70
22.	Less: Personal exemption	$1,375 00		30.	Surtax on Item 24. (See Instruction 23)	4 155 29
23.	Credit for Dependents (Explain in Schedule P)		1 375 00	31.	Total tax (Item 29 plus Item 30)	$ 5 534 99
24.	Balance. Surtax net income		$ 35 691 87	32.	Less: Income tax paid at source (2% of Item 4)	$
25.	Less: Interest on Liberty Bonds, etc. Item 9	$		33.	Income tax paid to a foreign country or U. S. possession	
26.	Dividends. Item 10 (a)	458 08		34.	Balance of Tax. (Item 31 minus Items 32 and 33)	$ 5 534 99
27.	Earned income credit. (See Instruction 22)	741 34	1 199 42			
28.	Balance subject to normal tax		$ 34 492 45			

AFFIDAVIT (See Instruction 27)

I (or we) swear (or affirm) that this return (including its accompanying schedules and statements, if any) has been examined by me (us), and to the best of my (our) knowledge and belief is a true, correct, and complete return, that I am (we are) in good faith, for the taxable year stated, pursuant to the Revenue Act of 1936 and the Regulations issued thereunder.

Sworn to and subscribed before me this 15 day of Dec. 1936

James A. Kammerdiner
(Signature of taxpayer)

M. Ridge
(Signature of officer administering oath)

NOTARIAL SEAL

A RETURN MADE BY AN AGENT MUST BE ACCOMPANIED BY POWER OF ATTORNEY (See Instr. 27)

AFFIDAVIT (See Instruction 27)

I (or we) swear (or affirm) that I (or we) prepared this return for the person or persons named herein and that the return (including its accompanying schedules and statements, if any) is a true, correct, and complete statement of all the information respecting the income tax liability of the person or persons for whom this return has been prepared of which I (we) have any knowledge.

Sworn to and subscribed before me this 8 day of Mar. 1936

(Signature of person preparing the return)

(Title or business connection of person preparing return)

(Address of person preparing return)

(Name of firm or employer, if any)

NOTARIAL SEAL

[Endorsed]: Filed Dec. 29, 1941.

(Testimony of Dan O'Hanlon.)

Mr. Mitchell: The individual income tax return of Mrs. Kammerdiner for the period commencing January 1, 1935 to April 4, 1935, the date of her death.

The Clerk: 35.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 35.")

DEFENDANT'S EXHIBIT NO. 35

RETURN FORM MARKED "DUPLICATE" MUST BE FURNISHED WITH ORIGINAL RETURN

Form 1040
TREASURY DEPARTMENT
Internal Revenue Service

(Auditor's Stamp)

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES FROM SALARIES OR WAGES OF MORE THAN $5,000 AND INCOMES FROM BUSINESS, PROFESSION, RENTS, OR SALE OF PROPERTY

For Calendar Year 1935

or fiscal year beginning January 1, 1935, and ended April 4, 1935

File This Return Not Later Than the 15th Day of the Third Month Following the Close of the Taxable Year

Do Not Write in These Space

File Cash 1497

Serial Number 810851

5 District

(Collector's Stamp)

Cash Check M. O. Corr. of Ind.

First Payment

$ 4.6.5

PRINT NAME AND ADDRESS PLAINLY BELOW

MYRTLE KAMMERDINER
(Name) (Both husband and wife should sign in a joint return)

237 So. Highland Ave.
(Street and number, or rural route)

Los Angeles, California
(Post office) (County) (State)

1 State whether you are a citizen of the United States, or if a resident alien. Citizen
2 If you filed a return for the preceding year, state where Collector's office was at that time. 6th Dist. Cal. Died April 4, 1935
3 Were you married and living with husband or wife during your taxable year? Part
4 Is this a joint return of husband and wife? No
5 State name of husband or wife if a separate return was made and the Collector's office to which it was sent James A. Kammerdiner
6 If not married, are you during your taxable year supporting in your household one or more persons closely related to you? No
7 How many dependents (other than husband or wife) under 18 years of age or incapable of self-support received their chief support from you during your taxable year? None
8 If your status is limited to question 3, 4, or 7 checked in filing the joint return, state facts and nature of absence.
9 State whether your books are kept on cash or accrual basis. Cash
10 State principal occupation or profession, accounting for salaries, wages, commissions, fees, etc., in Item 1. Office of Claude I. Parker
11 Did you exchange in or receive from any one person property in excess of $5,000, during the year 1935, without adequate and full consideration in money or money's worth? No
If so, did you file a gift tax return on Form 709 or an information return on Form 710? No
12. Did any person or persons advise you in respect of any question or matter affecting any item or schedule of this return, or assist or advise you in the preparation of this return, or actually prepare this return for you? Yes
If so, give the name and address of such person or persons and state the nature and extent of the assistance or advice received by you and the items or schedules in respect of which the assistance or advice was received; if this return was actually prepared by any person or persons other than yourself, state the source of the information reported in this return and the manner in which it was furnished to or obtained by such person or persons. from data submitted by taxpayer
13. Did you make a return of information on Forms 1096 and 1099 (see Instruction 31) for the calendar year 1935? (Answer "yes" or "no"). No

ATTACH REMITTANCE HERE

Item and Instruction No.	INCOME	Amount received	If payment made (Enclose in Schedule P)
1.	Salaries, Wages, Commissions, Fees, etc. (State name and address of employer)		$ 1 686 13
2.	Net profit (or Loss) from Business or Profession. (From Schedule A) (State kind of business)		
3.	Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest on tax-free covenant bonds)		
4	Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source		6 597 51
5.	Income (or Loss) from Partnerships, Syndicates, Pools, etc. (Furnish name, address, and kind of business)		
6.	Income from Fiduciaries. (Furnish name and address		
7.	Rents and Royalties. From Schedule B		
8.	Capital Gain (or Loss). From Schedule		
9	Taxable Interest on Liberty Bonds, etc. (From Schedule D, Line 9)		
10.	Dividends on Stock of (a) Domestic Corporations subject to taxation under Title I of 1934 Act Kammerdiner Notary Par Co. 237 So. Highland Ave. L.A.		147 00
	(b) Domestic Corporations not subject to taxation under Title I of 1934 Act		
	(c) Foreign Corporations		
11.	Other Income. (State nature. Use separate schedule, if necessary)		
12.	TOTAL INCOME IN ITEMS 1 TO 11		$ 8 430 64

DEDUCTIONS

13.	Interest Paid. (Explain in Schedule F)	$
14.	Taxes Paid. (Explain in Schedule F)	
15.	Losses by Fire, Storm, etc. (Explain in table at foot of page)	
16.	Bad Debts (including bonds determined to be worthless during taxable year). (Explain in Schedule F)	
17.	Contributions. (Explain in Schedule F)	
18.	Other Deductions Authorized by Law (including stock determined to be worthless during taxable year). (Explain in Schedule F)	
19.	TOTAL DEDUCTIONS IN ITEMS 13 TO 18.	
20.	NET INCOME. Item 12 minus Item 19	$ 8 430 64

PUBLIC (TO BE FILED)

COMPUTATION OF TAX (See Instruction 23)

21.	Net income. Item 20 above	$ 8 430 64	29.	Normal tax (4% of Item 28)	$ 289 35
22.	Less: Personal exemption	750 00	30.	Surtax on Item 24. (See Instruction 23)	164 03
23.	Credit for Dependents (Explain in Schedule F)	750 00	31.	Total tax (Item 29 plus Item 30)	$ 453 38
24.	Balance. Surtax net income	7 680 64	32.	Less: Income tax paid at source (2% of Item 4)	$
25.	Less: Interest on Liberty bonds, etc. Item 9	$	33.	Income tax paid to a foreign country or U. S. possession	
26.	Dividends. Item 10 above	147 00	34.	Balance of Tax. (Item 31 minus Items 32 and 33)	$ 453 38
27.	Earned income credit. See Instruction 22	300 00			
28.	Balance subject to normal tax	7 233 64			

AFFIDAVIT (See Instruction 27)

I (we) swear (or affirm) that this return, including its accompanying schedules and statements, if any, has been examined by me (us), and to the best of my (our) knowledge and belief is a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1934 and the Regulations issued thereunder.

Sworn to and subscribed before me this 2 day of Jan 193 6

Myrtle Kammerdiner
By James A Kammerdiner
(Signature)

NOTARIAL SEAL

A RETURN MADE BY AN AGENT MUST BE ACCOMPANIED BY POWER OF ATTORNEY (See Instr. 27)

AFFIDAVIT (See Instruction 27)

I (we) swear (or affirm) that I (we) prepared this return for the person or persons named herein and that the return (including its accompanying schedules and statements, if any) is a true, correct, and complete statement of all the information respecting the income tax liability of the person or persons for whom this return has been prepared of which I (we) have any knowledge.

Sworn to and subscribed before me this 2 day of Mar, 193 6

NOTARIAL SEAL

[Endorsed]: Filed Dec. 29, 1941.

DEFENDANT'S EXHIBIT NO. 36

RETURN FORM MARKED "DUPLICATE" MUST BE FILED WITH THIS ORIGINAL RETURN

Form 1040
Treasury Department
Internal Revenue Service
Auditor's Stamp)

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES FROM SALARIES OR WAGES OF MORE THAN $5,000 AND INCOMES FROM BUSINESS, PROFESSION, RENTS, OR SALE OF PROPERTY

For Calendar Year 1935

or fiscal year begun Apr. 5, 1935, and ended Dec. 31, 1935

File This Return Not Later Than the 15th Day of the Third Month Following the Close of the Taxable Year

PRINT NAME AND ADDRESS PLAINLY BELOW

Estate of Myrtle Kammerdiner (Deceased)
(Name) (Both husband and wife, if this is a joint return)

237 So. Highland Ave.
(Post office address, including number, if in city or town)

Los Angeles — L.A. — Calif.
(Post office) (County) (State)

Do Not Write in These Spaces

File Code 1407

Serial Number 810829

District

(Collector's Stamp)

Cash | Check | M.O. | Cert. of Ind.

First Payment

$

6th Dist. Calif

Part

No

James A. Kammerdiner

No

None

6. If a change has been made during the taxable year in the business, state date and nature of change: Estate formed April 5, 1935

9. State whether your books are kept on cash or accrual basis: Cash

10. State principal occupation or profession, or nature of business: Estate

11. Did you transfer to or receive from any one person, firm, or corporation in excess of $5,000, during the calendar year 1935, without an adequate and full consideration in money or money's worth? No

If so, did you file a gift tax return on Form 709 or an information return on Form 710?

12. Did any person or persons advise you in respect of any question or matter affecting any item or schedule of this return, or assist or advise you in the preparation of this return, or actually prepare this return for you? Yes

If so, give the name and address of such person or persons and state the nature and extent of the assistance or advice rendered by you and the items or schedules in respect of which the assistance or advice was rendered, if this return was actually prepared by any person or persons other than yourself, state the source of the information reported in this return and the manner in which it was furnished to or obtained by such person or persons: Office of Claude I Parker from data submitted by taxpayer

13. Did you make a return of information on Forms 1096 and 1099 (see Instruction 41) for the calendar year 1935? (Answer "Yes" or "No"): No

ATTACH REMITTANCE HERE

Item and Instruction No.	INCOME	Amount received	Expenses paid (Deduct in Schedule F)					
1.	Salaries, Wages, Commissions, Fees, etc. (State name and address of employer)	$	$	$				
2.	Net profit (or Loss) from Business or Profession. (From Schedule A) (State kind of business)							
3.	Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest on tax-free covenant bonds)							
4.	Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source							
5.	Income (or Loss) from Partnerships, Syndicates, Pools, etc. (Furnish name, address, and kind of business)			28	525	16		
6.	Income from Fiduciaries. (Furnish name and address)							
7.	Rents and Royalties. (From Schedule B)							
8.	Capital Gain (or Loss). (From Schedule C)							
9.	Taxable Interest on Liberty Bonds, etc. (From Schedule D, Line 6)							
10.	Dividends on Stock of: (a) Domestic Corporations subject to taxation under Title I of 1934 Act. Kammerdiner Rotary Jar Co -237 So. Highland Ave. L.A.				311	07		
	(b) Domestic Corporations not subject to taxation under Title I of 1934 Act							
	(c) Foreign Corporations							
11.	Other Income. (State nature) (Use separate schedule, if necessary)							
12.	TOTAL INCOME IN ITEMS 1 TO 11.						$ 28	636 23
	DEDUCTIONS							
13.	Interest Paid. (Explain in Schedule F)		$					
14.	Taxes Paid. (Explain in Schedule F)							
15.	Losses by Fire, Storm, etc. (Explain in table at foot of page 2)							
16.	Bad Debts (including bonds determined to be worthless during taxable year). (Explain in Schedule F)							
17.	Contributions. (Explain in Schedule F)							
18.	Other Deductions Authorized by Law (including stock determined to be worthless during taxable year). (Explain in Schedule F)							
19.	TOTAL DEDUCTIONS IN ITEMS 13 TO 18.							
20.	NET INCOME. Item 12 minus Item 19						$ 28	636 23

DUPLICATE FILED

RECEIVED JUN 22 1936 INTERNAL REVENUE DIVISION LOS ANGELES

COMPUTATION OF TAX (See Instruction 23)

21.	Net Income. Item 20 above		$	28	636	23	
22.	Less: Personal exemption.	$ 1000	00				
23.	Credit for Dependents (Explain in Schedule F)			1	000	00	
24.	Balance. Surtax net income		$	27	636	23	
25.	Less: Interest on Liberty Bonds, etc. Item 9	$					
26.	Dividends. (Item 10 (a))	311	07				
27.	Earned Income credit. (See Instruction 22)				311	07	
28.	Balance subject to normal tax		$	27	325	16	

29.	Normal tax (4% of Item 28)					$ 1	093 01
30.	Surtax on Item 24. (See Instruction 23)					2	550 88
31.	Total tax (Item 29 plus Item 30)					$ 3	643 89
32.	Less: Income tax paid at source (2% of Item 4)	$					
33.	Income tax paid to a foreign country or U. S. possession						
34.	Balance of Tax. (Item 31 minus Items 32 and 33)					$ 3	643 89

AFFIDAVIT (See Instruction 27)

I/we swear (or affirm) that this return (including its accompanying schedules and statements, if any) has been examined by me/us, and to the best of my/our knowledge and belief is a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1934 and the Regulations issued thereunder.

Sworn to and subscribed before me this 2nd day of June, 1936

James A. Kammerdiner
(Signature of taxpayer)

Marguerite Lepage
(Signature of officer administering oath)

NOTARIAL SEAL

A RETURN MADE BY AN AGENT MUST BE ACCOMPANIED BY POWER OF ATTORNEY (See Instr. 27)

AFFIDAVIT (See Instruction 27)

I/we swear (or affirm) that I/we prepared this return for the person or persons named herein and that the return (including its accompanying schedules and statements, if any) is a true, correct, and complete statement of all the information respecting the income tax liability of the person or persons for whom this return has been prepared of which I/we have any knowledge.

Sworn to and subscribed before me this 2nd day of June, 1936

Marguerite Lepage
(Signature of officer administering oath)

O. E. Smith
(Signature of person preparing the return)

NOTARIAL SEAL

(If employed, state name and address of employer)

CLAUDE I. PARKER

[Endorsed]: Filed Dec. 29, 1941.

(Testimony of Dan O'Hanlon.)

By Mr. Mitchell:

Q. I hand you defendant's Exhibit 26, the individual income tax return of Mr. Kammerdiner for the year 1928, calling your attention to the first page under "income from partnerships," the amount $67,000.00 and some odd dollars and the "J. Kammerdiner. Los Angeles, California." And then "ditto, earned income $16,850.86." Do you recall how that difference arose?

A. No, I can't recall.

Q. A portion earned income, and a portion not earned income. [129]

A. Well, I imagine it is a percentage of the total amount.

Q. Total amount of what?

A. Of the partnership income. You are allowed to take so much of the partnership income as earned income. What does the amount of the partnership show for the total for his share?

Q. Well, let's see. You are now looking at partnership return for the year 1928, defendant's 21.

A. Well, here is the amount, earned income so much.

Q. How much?

A. $16,850.86; and the balance is $67,403.44.

Q. Do you have any thought as to what kind of income the other income was, that was not earned income? What kind of income did you intend that to be as reported?

(Testimony of Dan O'Hanlon.)

A. Well, in an income tax return on a partnership, you are only allowed so much of the total amount as earned income. You get a credit on your earned income of 10 per cent.

Q. I see.

A. It was all partnership, all from the partnership but a certain portion was allowed in which you could take a credit of 10 per cent. That was up to 20,000 at that time.

Q. I now hand you defendant's Exhibit 28 and 29, the income tax returns of the two spouses for the year 1929.

Will counsel stipulate that a partnership return, [130] information return, was filed for the year 1929?

Mr. Bloom: I don't know a thing about it. Who prepared that?

Mr. Mitchell: Mr. O'Hanlon.

By Mr. Mitchell:

Q. I wonder if you will look at this return and see if it will refresh your memory as to whether a partnership return was filed for the year 1929.

[131]

Q. Can you testify now whether you made out a partnership return for 1929?

A. No, I couldn't definitely tell.

Q. You can't do that? A. No.

Mr. Mitchell: That is all.

The Court: Cross examination.

(Testimony of Dan O'Hanlon.)

Cross Examination

By Mr. Bloom:

Q. What business or profession are you in, Mr. O'Hanlon?

A. I am in the real estate, insurance. I started out as being an accountant in Fullerton and found there wasn't much money in it so I decided to switch to the real estate insurance business, but I helped folks with their income taxes and I have made out 250 to 300 returns a year.

Q. What was the basis of your experience before you [133] went into making income tax returns?

A. I was auditor for the British Government before I came to the United States for the Ministry of Pensions. After the War I was an officer in the British Army.

Q. When did you come to the United States?

A. 1920.

Q. I believe you testified you have been making out income tax returns since 1920. You said about 20 years? A. Yes.

Q. And prior to the making out of income tax returns in the United States, beginning in 1921, you had had no experience with the American income tax law; is that correct?

A. No, none at all.

Q. And all the experience that you gained from 1921 up to 1925 was in your own private study of

(Testimony of Dan O'Hanlon.)

the income tax law and the making out of returns; is that correct? A. Yes.

Q. Now, isn't it a fact, Mr. O'Hanlon, showing you defendant's Exhibit No. 17, that the only information you received from Mr. or Mrs. Kammerdiner is that portion which appears on page 2 thereof, immediately above your signature, with respect to whether they were or were not partners in the operation of the business?

A. Well, that is a pretty comprehensive statement, is it not?

Q. But that was all the information you got from Mr. [134] and Mrs. Kammerdiner, is it not?

A. There is plenty of information there.

Q. Will you answer my question either "yes it is," or "no, it isn't," whether it is comprehensive or whether it is very detailed?

A. I wouldn't swear to whether it was all or not.

Q. Now, isn't it a fact, Mr. O'Hanlon, in the making up of protests or income tax returns, clients will come in and they will give you a group of facts and then you sit down, after they are gone, and you either make out the return or the protest, whichever it happened to be, from that information?

A. No, I don't think I prepared more than two protests all the 20 years I have been in the business.

Q. Well, two were introduced in evidence.

A. Are there two?

Q. Yes.

(Testimony of Dan O'Hanlon.)

A. Probably that is all I have done. I think the protest was upheld, if I am not mistaken, upheld by the Board of Tax Appeals.

Q. Mr. O'Hanlon, you testified, I believe, in answer to a question by Mr. Mitchell with respect to earned income credit in the partnership, that you can take earned income credit where the partners work in the partnership; is that correct?

A. It is on the partnership return. You are allowed [135] so much unless there is no capital invested and if it is all services you can take it all off. If it is services and capital, you are only allowed to take so much off.

Q. You can also do that if you own and manage real estate, can't you, Mr. O'Hanlon?

A. Yes.

Q. And if two parties own real estate as joint tenants?

A. You mean in the real estate business or the ownership of real estate?

Q. The ownership of real estate and the collection of rents and the management of them.

A. Well, in the management of real estate, you could take it all off as earned income.

Q. Now, if you own the real estate and you rent but you also manage the real estate and see that it is kept in good repair, the Commissioner of Internal Revenue permits the services to be valued and that portion of the income to be taken as earned income; isn't that correct?

(Testimony of Dan O'Hanlon.)

A. Yes, sir, that is correct.

Q. And if two parties owned property, as joint tenants, and performed services as such joint tenants, and also had capital in the business, they could get the same benefit from their earned income credit, couldn't they? A. Yes.

Q. And it wouldn't make any difference whether they [136] were joint tenants or partners as to that portion, would it? A. No.

Q. On the partnership return for one of the years, Mr. Mitchell asked you why you included some Clinton property and other real estate, to which I believe you answered that Mrs. Kammerdiner furnished the information? A. Yes.

Q. Do you mean by that information that Mrs. Kammerdiner told you whether that property, or the income and expense from that property was to go on a partnership return, or on her own separate return, or Mr. Kammerdiner's return?

A. It was put on the partnership return and Mrs. Kammerdiner signed it under oath.

Q. But, Mr. O'Hanlon, the question was: why did you put it there, and your answer was that Mrs. Kammerdiner furnished you the information?

A. Sure she did.

Q. Did she furnish you that information and tell you to put it on the partnership return, Mr. O'Hanlon, or didn't she just say "Here is the information with respect to the Clinton Avenue property"?

A. I couldn't remember as to that but the fact

(Testimony of Dan O'Hanlon.)

that it is on the partnership return and signed by her, under oath, would indicate that she said to put it in the partnership return.

Q. Then you are just guessing as to why it is on the [137] partnership return?

A. I am not guessing.

Q. Don't you make up the return before the party comes to sign it or do they sign it before you make it up?

A. They give me the information. I can't make up any return unless I have the information first. The taxpayer gives me the information and from the information he gives me I prepared the return and when it is prepared the taxpayer signs and swears to it.

Q. Referring to the year 1926, and referring to defendant's Exhibit 20, supposing you tell us just what information Mrs. Kammerdiner gave you to make up that return.

A. I can't tell you except what is on the return.

Q. I am not asking you for what is on the return.

The Court: The answer is he can't tell you.

The Witness: I can't remember back that long what she told me. I am not a magician.

By Mr. Bloom:

Q. So that your answer to Mr. Mitchell's ques-question that the reason why certain property appeared on this return is because Mrs. Kammerdiner gave you the information is because——

(Testimony of Dan O'Hanlon.)

A. It is self-evident.

Q. Never mind what is self-evident. Just answer my question now: your answer to Mr. Mitchell's question as to why did the Clinton Avenue property and certain other real [138] property appear on the 1928 return——

A. Because it was given to me to put on the return.

Q. All right. You say it was given to you to put on the return? A. Yes.

Q. Tell us who gave you that information to put on the return? A. Mrs. Kammerdiner.

Q. Tell us what information Mrs. Kammerdiner gave you and just what she said.

A. I can't do that.

Q. Then how do you know it was given to you by Mrs. Kammerdiner to put on that return?

A. Because it was itself on the return and I put it on the record.

Q. And the only reason you can give that Mrs. Kammerdiner had anything to do with putting it on the return is because it is on there?

A. And signed by her.

The Court: In other words, you have no definite recollection. As you say you may handle 150 or 200 a year?

The Witness: Yes, your Honor.

The Court: You have no definite recollection as to each of them but you try as nearly as possible to put down the information that you derive from the client?

(Testimony of Dan O'Hanlon.)

The Witness: That is right. [139]

The Court: And the only recollection you have that the client gave you particular information is because you put it down there?

The Witness: Yes, your Honor. I wouldn't put it down unless it was given to me and she swore to it.

The Court: All right. Is there anything further from this witness?

By Mr. Bloom:

Q. Mr. O'Hanlon, for the years that you prepared these returns, 1925, 1926, 1927, '28 and '29, did the Government accept the returns as filed?

A. So far as I know they did.

Q. Then why did you file a protest?

A. Well, I think the protest was filed—if you don't file a protest, you can't come back later. You must file a protest when you put it in.

Q. You don't file a protest unless the Government refuses to recognize the correctness of the return, as filed, do you? A. Yes, sir.

Q. In other words, if the Government agent comes around and says, "The return that you filed is correct in all respects," then you protest it anyway?

A. No. While the community property tax was under discussion as to whether it was legal or not, a lot of folks put in partnership returns, like Mr. Kammerdiner and his [140] wife, and if you didn't

(Testimony of Dan O'Hanlon.)

put in a protest at that time, you couldn't object before the Board of Tax Appeals, your case was settled; but if you put in a protest, your case could be heard, and it was heard later and upheld.

Q. Upheld on the protest?

A. I don't know. I had nothing to do with the case when it came up later. I didn't take it to the Board of Tax Appeals. I am not an attorney before the Board of Tax Appeals but I understand the appeal was upheld by the Board of Tax Appeals.

Q. Mr. O'Hanlon, I am not trying to argue with you, but isn't it a fact that when you filed the return for 1925 and 1926, the agent came around and said that he would not recognize the right of Mr. and Mrs. Kammerdiner to divide the income between themselves? A. No, sir.

Q. That didn't happen?

A. No, he never came to me.

Q. I will ask you to look at this letter, dated August 14, 1928, addressed to Mr. J. Kammerdiner and ask if you can tell me what that is.

A. What was your question?

Q. Can you tell me what that is?

A. It is a letter from the Internal Revenue Collector denying the right to file a partnership return, dated 1928. You asked me if the Internal Revenue man came around in '25 [141] and '26 and told me that they couldn't file a return. I said that he didn't.

Q. Perhaps you misunderstood my question.

(Testimony of Dan O'Hanlon.)

What I asked you was whether or not the returns, as followed by you, for the year 1925 and '26 were accepted by the Government.

A. So far as I know they were. That thing is dated 1928.

The Court: The Statute of Limitations hadn't run. The mere fact that the Government waited before they objected to it doesn't make any difference. As far as fraud goes there is never a time limit, you know that, don't you?

The Witness: Yes, I know that.

The Court: Then your best answer is you don't know. You don't know whether they accepted it or not.

By Mr. Bloom: Referring to defendant's Exhibit 17 and 18, which are the two protests which you filed for and on behalf of the Kammerdiners, what did you mean by this statement appearing in there: "The protest is made against decision as mentioned in letter dated June 12, 1928, from Treasury Department, Internal Revenue Service, 728 South Hill Street, Los Angeles, California, and more particularly detailed in summary attached to above-mentioned Treasury Department letter.

"Exception is taken to the decision disallowing a partnership between Mr. and Mrs. J. Kammerdiner, and this is the [142] cause of the increase in tax."

Now, what is the letter to which you are referring, the one to which you are protesting?

(Testimony of Dan O'Hanlon.)

A. The increase in tax was caused by making one return instead of two.

The Court: Doesn't that carry to your mind the fact that there must have been a disallowance of the separate return on the partnership basis to warrant that protest; that you weren't just protesting in vacuo—you, being a British officer, know what that means. You weren't in vacuo protesting against something that hadn't happened?

The Witness: But the protest was made in 1928.

The Court: But it still related to the tax return that was disallowed as of the year before. The mere fact that you sent a check and the Government doesn't return it immediately doesn't mean anything. They wait until they levy a deficiency assessment and then they let you begin to worry and then you begin to work thereon. Isn't that the procedure in tax cases?

The Witness: I didn't carry on with the protest.

Mr. Mitchell: I am willing to stipulate that the deficiency was proposed by the Commission before the protest was signed.

The Court: It is evident the witness has some accounting ability but he doesn't know the technique of tax procedure after it leaves its first stage of filing. [143]

The Witness: I don't claim to, your Honor.

Mr. Bloom: We offer in evidence letter from the Treasury Department, Internal Revenue Serv-

(Testimony of Dan O'Hanlon.)

ice, dated June 12, 1928, being a report for the years 1925 and 1926 and addressed to Mrs. J. Kammerdiner.

The Court: All right. It may be received.

The Clerk: Plaintiff's Exhibit 11.

(The document referred to was received in evidence and marked "Plaintiff's Exhibit No. 11.")

PLAINTIFF'S EXHIBIT NO. 11

Treasury Department
Internal Revenue Service
728 So. Hill St.,
Los Angeles, Calif.

Office Of
Internal Revenue Agent in Charge

In re: Income Tax.
Date of report: Jun 12 1928
Years covered: 1925 and 1926.

Mrs. J. Kammerdiner,
237 So. Highland Ave.,
Los Angeles, Calif.

Madam:

There is attached a statement af adjustments which this office proposes to recommend, affecting your income tax liability, and a form of waiver of your right to file a petition with the United States Board of Tax Appeals. If a deficiency is indicated and the adjustments suggested with respect thereto

(Testimony of Dan O'Hanlon.)

are satisfactory, and you desire that the recommendations be forwarded promptly to the Bureau at Washington for review and final determination, the waiver should be signed and forwarded to this office. Interest is payable on deficiencies found due as set forth on the attached form 882.

If you do not agree with the conclusions set forth in the incolsed statement it is desired that every opportunity be afforded you to present to this office any objections or additional information. You are accordingly granted thirty days from date of this letter within which you may, if you so desire, protest the proposed adjustments. The protest and any additional statement of facts must be submitted to this office, executed in triplicate, under oath, and should contain the following information:

See note below.

(a) The name and address of the taxpayer (in the case of an individual the residence, and in the case of a corporation the principal office or place of business); (b) in the case of a corporation the name of the State of incorporation; (c) the designation by date and symbol of the letter advising of the proposed deficiency with respect to which the protest is made; (d) the designation of the year or years involved and a statement of the amount of tax in dispute for each year; (e) an itemized schedule of the findings to which the taxpayer takes exception; (f) a summary statement of the grounds upon

(Testimony of Dan O'Hanlon.)

which the taxpayer relies in connection with each exception; (g) in case the taxpayer desires a hearing, a statement to that effect; and (h) in case the protest is prepared or filed by an attorney or agent it shall have thereon a statement signed by such attorney or agent showing whether or not he prepared it and whether or not the attorney or agent knows of his own knowledge that the facts therein are true.

If a protest is filed it will be given careful consideration in this office before the recommendations are forwarded to Washington for action. In the event that you do not protest within the thirty-day period, the case will be forwarded immediately thereafter to the Bureau at Washington for review.

In the event the recommendations are not approved upon review in Washington, you will be notified and given opportunity to discuss the changes with this office, or should you fail to protest to this office, *any protest which you may subsequently file with Washington will be referred to this office for consideration.*

If a deficiency is indicated no remittance should be made until you receive notice of assessment from the Collector of Internal Revenue for your District.

Please acknowledge receipt by return mail.

Respectfully,

E. C. WRIGHT.

Internal Revenue Agent
in Charge.

(Testimony of Dan O'Hanlon.)

Note: Every affidavit, argument, brief, or statement of facts prepared or filed by an attorney or agent as argument or evidence in the matter of a claim or tax matter pending before the Treasury Department, shall have thereon a statement signed by such attorney or agent showing whether or not he prepared such document and whether or not the attorney or agent knows of his own knowledge that statements contained therein are true.

Enclosures:

ED

(Testimony of Dan O'Hanlon.)

Ralph B. Sells,
Examining Officer.

In re: Mrs. J. Kammerdiner
237 So. Highland Ave.,
Los Angeles, Calif.

Preliminary Statement
Summary

Year	Overassessment
1925	$1,631.99
1926	2,512.43
Total	$4,144.42

Income shown by Partnership return, J. Kammerdiner and Mrs. J. Kammerdiner, has been reported as all taxable to husband. Changes were explained to taxpayer who does not agree to change.

Schedule 1.

Block Adjustments 1925

		Return	Deductions from Income	
4.	Partnership	26,674.82		
7.	Dividends	289.41		
10.	Total	26,964.23		
15.	Contributions	150.00		
18.	Total	26,814.23	26,814.23	
	Total Income			None

Schedule 1-A

Explanation of Changes

Total Net Income 26,814.23
Taken up on return of husband, J. Kammerdiner.
Similar change made for the year 1926, Schedule 3.

(Testimony of Dan O'Hanlon.)

In re: Mrs. J. Kammerdiner.

Year 1925.

Schedule No. 2

Computation of Tax—1924 and Subsequent Years.

Income Tax.

Net income (from Schedule 1)	None
Tax previously assessed	$1,631.99
Overassessment	1,631.99

Schedule No. 3.

1926.

Block Adjustments.

	Return	Deductions from Income	Corrected
4. Partnership	33,405.09		
7. Dividend	368.75		
10. Total	33,773.84		
15. Contributions	200.00		
18.	33,573.84	33,573.84	None
Total Income			None.

Schedule No. 4.

Year 1926.

Computation of Tax—1924 and Subsequent Year.

Income Tax.

Net income from Schedule	None
Total tax assessable	None
Tax previously assessed	$2,512.43
Overassessment	$2,512.43

[Endorsed]: Filed Dec. 29, 1941.

(Testimony of Dan O'Hanlon.)

Mr. Bloom: A letter from the Treasury Department, dated June 12, 1928, being a report of the years 1925, 1926, addressed to Mr. J. Kammerdiner.

The Clerk: Plaintiff's Exhibit 12.

(The document referred to was received in evidence and marked "Plaintiff's Exhibit No. 12.")

PLAINTIFF'S EXHIBIT No. 12

Treasury Department
Internal Revenue Service
728 So. Hill St.,
Los Angeles, Calif.

Office Of
Internal Revenue Agent in Charge
In re: Income Tax.
Date of report: Jun 12 1928
Years covered: 1925 and 1926.

Mr. J. Kammerdiner,
237 S. Highland Ave.
Los Angeles, Calif.

Sir:

There is attached a statement of adjustments which this office proposes to recommend, affecting your income tax liability, and a form of waiver of your right to file a petition with the United States Board of Tax Appeals. If a deficiency is indicated and the adjustments suggested with respect thereto are satisfactory, and you desire that the recommendations be forwarded promptly to the Bureau at Washington for review and final determination, the

(Testimony of Dan O'Hanlon.)

waiver should be signed and forwarded to this office. Interest is payable on deficiencies found due as set forth on the attached form 882.

If you do not agree with the conclusions set forth in the inclosed statement it is desired that every opportunity be afforded you to present to this office any objections or additional information. You are accordingly granted thirty days from date of this letter within which you may, if you so desire, protest the proposed adjustments. The protest and any additional statement of facts must be submitted to this office, executed in triplicate under oath, and should contain the following information:

See note below.

(a) The name and address of the taxpayer (in the case of an individual the residence, and in the case of a corporation the principal office or place of business); (b) in the case of a corporation the name of the State of incorporation; (c) the designation by date and symbol of the letter advising of the proposed deficiency with respect to which the protest is made; (d) the designation of the year or years involved and a statement of the amount of tax in dispute for each year; (e) an itemized schedule of the findings to which the taxpayer takes exception; (f) a summary statement of the grounds upon which the taxpayer relies in connection with each exception; (g) in case the taxpayer desires

(Testimony of Dan O'Hanlon.)

a hearing, a statement to that effect; and (h) in case the protest is prepared or filed by an attorney or agent it shall have thereon a statement signed by such attorney or agent showing whether or not he prepared it and whether or not the attorney or agent knows of his own knowledge that the facts therein are true.

If a protest is filed it will be given careful consideration in this office before the recommendations are filed to Washington for action. In the event that you do not protest within the thirty-day period, the case will be forwarded immediately thereafter to the Bureau at Washington for review.

In the event the recommendations are not approved upon review in Washington, you will be notified and given opportunity to discuss the changes with this office, or should you fail to protest to this office, *any protest which you may subsequently file with Washington will be referred to this office for consideration.*

If a deficiency is indicated no remittance should be made until you receive notice of assessment from the Collector of Internal Revenue for your district.

Please acknowledge receipt by return mail.

Respectfully,

E. C. WRIGHT.

Internal Revenue Agent in Charge.

Note: Every affidavit, argument, brief, or statement of facts prepared or filed by an attorney or

(Testimony of Dan O'Hanlon.)

agent as argument or evidence in the matter of a claim or tax matter pending before the Treasury Department shall have thereon a statement signed by such attorney or agent showing whether or not he prepared such document and whether or not the attorney or agent knows of his own knowledge that statements contained therein are true.

Inclosures:

ED

Waiver of Right to File a Petition with the United States Board of Tax Appeals

The undersigned taxpayer hereby waives the right to file a petition with the United States Board of Tax Appeals under Section 274(a) of the Revenue Act of 1926, and consents to the assessment and collection of a deficiency in tax for the years 1925 and 1926 aggregating $10190.26, as indicated in the statement of the Internal Revenue Agent in Charge at Los Angeles, Calif. dated Jun 12, 1928.

Summary

Years	Additional Tax
1925	$ 4,220.70
1926	5,969.56
Total	10,190.26

.....

(Name)

.....

(Address)

Date By

(Testimony of Dan O'Hanlon.)

Note.—This waiver does not extend the statute of limitations for refund or assessment of tax, and is not an agreement as provided under Section 1106 of the Revenue Act of 1926, but its execution and filing at the address shown in the accompanying letter will expedite the adjustment of your income tax liability as indicated above.

Ralph B. Sell,
Internal Revenue Agent.

In re: Mr. J. Kammerdiner,
237 S. Highland Ave.,
Los Angeles, Calif.

Preliminary Statement.
Summary.

Years	Additional Tax
1925	$ 4,220.70
1926	5,969.56
Total	10,190.26

Principal cause of additional tax:

Partnership of Mr. and Mrs. Kammerdiner, the income of which appears to be community income taxable to husband.

Changes discussed with taxpayer who does not agree to change.

Taxpayer is married, living with wife and two children under 18 and principal support of mother-in-law.

Taxpayer objects to the change based on the following argument: "The undersigned James A.

(Testimony of Dan O'Hanlon.)

Kammerdiner and Myrtle B. Kammerdiner, husband and wife, of Los Angeles, California, hereby state, declare and agree that the business of manufacturing, renting and selling Rotary Jars, heretofore conducted by them under the name of James A. Kammerdiner, at 237 South Highland Avenue, Los Angeles, California, all the assets of which business is their community property, is now and all increase or change thereof shall be, their joint property with right of survivorship.

In Witness Whereof we have hereunto affixed our signature at the City of Los Angeles, California on the 3d day of Jan. 1928."

Taxpayers state that they had an oral agreement prior to the above. First return as a partnership made in 1925.

Provisions of Sec. 1106(b) explained to taxpayer.

"Rotary Jars", a patent device used to release oilwell equipment that at times get stuck in well while drilling for oil.

[Endorsed]: Filed Dec. 29, 1941.

(Testimony of Dan O'Hanlon.)

In re: Mr. J. Kammerdiner.

Schedule 1.

Block Adjustments 1925.

	Return	Additions to Income	Deductions from Income	Corrected
2. Business		54,333.65		54,333.65
4. Partnership	29,492.71		26,674.82	2,817.89
5. Rent		142.83		142.83
7. Dividends	289.41	289.41		578.82
10. Total				57,873.19
11. Interest Pd.			310.78	310.78
12. Taxes			816.07	816.07
15. Contributions			150.00	150.00
17. Total				1,276.85
Total Income....	29,782.12	54,765.89	27,951.67	56,596.34

Schedule 1-A

Explanation of Changes.

Total Net Income shown by return of	
J. Kammerdiner	$29,782.12
Mrs. J. Kammerdiner	26,814.23
As amended—Joint return	$56,596.35

Total Net Income shown by the Partnership return, J. Kammerdiner and Mrs. J. Kammerdiner and wife's income all taken up as taxable to Mr. J. Kammerdiner.

Name of Taxpayer—Mr. J. Kammerdiner.

Schedule No. 2

Year—Period—ended 1925

Computation of Tax—1924 and Subsequent Years

Income Tax

Net income (from Schedule 1)		$56,596.34
Less: Net loss (section 206)	$	
Capital net gain		
Income subject to surtax		$56,596.34

(Testimony of Dan O'Hanlon.)

Less: Dividends	$ 578.82	
Interest on Liberty Bonds, etc.		
Personal exemption and credit for dependents	4,700.00	5,278.82
Balances subject to normal tax		$51,317.52
Normal tax at 1½ on $4,000	$ 60.00	
Normal tax at 3 on 4,000	120.00	
Normal tax at 5 on 43,317.52	2,165.88	
Surtax on 56,596.34	3,889.45	
Tax at 12½% on capital net gain of $		$ 6,235.33
Fiscal year income from partnerships, etc.:		
Normal tax at on $	$	
Normal tax at on $		
Normal tax at on $		
Surtax on	$	
Total tax		$ 6,235.33
Less: Credit of 25% for earned net income (from Schedule 3)	$ 41.05	
Income tax paid at source		
Taxes paid to a foreign country		41.05
Total tax assessable		$ 6,194.28
Tax previously assessed		1,973.58
Additional tax to be assessed (over assessment)		$ 4,220.70

In re: J. Kammerdiner.

Schedule No. 3

Computation of Earned Income Credit—
1924 and Subsequent Years

Year 1925.

Income Tax

Earned net income (not over $10,000 for 1924, or $20,000 thereafter)	$11,630.30

(Testimony of Dan O'Hanlon.)

Less personal exemption and credit for dependents		4,700.00
Balance		$ 6,930.30
Normal tax at 1½% on $4000	$ 60.00	
Normal tax at 3% on $2930.30	87.91	
Surtax on $11,630.30	16.30	
Total tax		$ 164.21
Credit of 25 per cent		$ 41.05

(2) 54333.65
(4) 2817.89

58151.54
20

11630.3080

In re: J. Kammerdiner.

Schedule No. 4

Block Adjustments 1926.

	Return	Additions to Income	Deductions from Income	Corrected
2. Business		67,469.98		67,469.98
3. Interest		13.59		13.59
4. Partnership	33,405.09		33,405.09	
5. Rents		29.54		29.54
7. Dividends	368.75	368.75		737.50
9. Joint Venture	3,507.83			3,507.83
10. Total				71,758.44
12. Taxes Paid			1,701.93	1,701.93
15. Contributions			200.00	200.00
17. Total				1,901.93
Total Income	37,281.67	67,881.86	35,307.02	69,856.51

(Testimony of Dan O'Hanlon.)

Schedule 4-A.

1926.

Explanation of Changes.

Total net Income as shown by return of	
J. Kammerdiner	$37,281.67
Mrs. J. Kammerdiner	33,573.84
Total	70,855.51
Less error in computation	999.00
Amended—Joint return	$69,856.51

In re: J. Kammerdiner

Profit and Loss Statement.

Item			
	Sale and rentals		$119,862.43
	Cost of equipment, repairs and expenses	$ 40,249.28	
	Salary and Commissions	9,525.00	
	Auto expenses	1,155.81	
	Auto depn. 25%	1,305.00	
	Loss on Jars	156.75	
	Total deduction		53,392.45
2.	Business Income (Sch. 4)		67,469.98
5.	Total receipts		537.50
	Taxes and repairs	367.96	
	Depn. 4%	140.00	507.96
	Rental Income		29.54
9.	Joint Venture Orange Grove ⅓ interest		3,507.83

(Testimony of Dan O'Hanlon.)

Name of Taxpayer—J. Kammerdiner.

Schedule No. 5

Year 1926.

Computation of Tax—1924 and Subsequent Years

Income Tax

Net income (from Schedule 1)		$69,856.51
Less: Net loss (section 206)	$	
Capital net gain		
Income subject to surtax		$69,856.51
Less: Dividends	$ 737.50	
Interest on Liberty Bonds, etc.		
Personal exemption and credit for dependents	4,700.00	5,437.50
Balances subject to normal tax		$64,419.01
Normal tax at 1½ on $4,000.00	$ 60.00	
Normal tax at 3 on 4,000.00	120.00	
Normal tax at 5 on 56,419.00	2,820.95	
Surtax on $69,856.51	6,035.61	
Tax at 12½% on capital net gain of $		$ 9,036.56
Fiscal year income from partnerships, etc.:		
Normal tax at on $	$	
Normal tax at on $		
Normal tax at on $		
Surtax on	$	
Total tax		$ 9,036.56
Less: Credit of 25% for earned net income (from Schedule 6)	$ 74.67	
Income tax paid at source		
Taxes paid to a foreign country		74.67
Total tax assessable		$ 8,961.89
Tax previously assessed		2,992.33
Additional tax to be assessed (over assessment)		$ 5,969.56

(Testimony of Dan O'Hanlon.)

In re: J. Kammerdiner.

Schedule No. 6

Computation of Earned Income Credit—
1924 and Subsequent Years

Year 1925.

Income Tax

Earned net income (not over $10,000 for 1924, or $20,000 thereafter)		$14,195.56
Less personal exemption and credit for dependents		4,700.00
Balance		9,495.56
Normal tax at 1½% on $4000	$ 60.00	
Normal tax at 3% on $4000	120.00	
Normal tax at 5% on $1,495.56	74.78	
Surtax on $14,195.56	43.91	
Total tax		298.69
Credit of 25 per cent		74.67

Block
(2) 67469.98
(9) 3507.83

70977.81
20%

14195.5620

Endorsed]: Filed Dec. 29, 1941.

Mr. Bloom: A letter from the Treasury Department, Washington, D. C., addressed to Mr. J. Kammerdiner, dated August 14, 1928, being a review of the report sent in for the years 1925 and 1926.

The Clerk: 13. [144]

(Testimony of Dan O'Hanlon.)

(The document referred to was received in evidence and market "Plaintiff's Exhibit No. 13.")

PLAINTIFF'S EXHIBIT No. 13

(959M) Form NP-1b

Treasury Department
Washington
Aug. 14, 1928

Office of
Commissioner of Internal Revenue
Address Reply to
Commissioner of Internal Revenue
And Refer to
IT:AR:B-10
CEJ

Mr. J. Kammerdiner,
237 South Highland Avenue,
Los Angeles, California.

Sir:

A review of the report submitted by the Internal Revenue Agent in Charge, San Francisco, California, covering your tax liability for the years 1925 and 1926, discloses a deficiency of $10,190.26.

The recommendations of the Revenue Agent above indicated have been approved by this office after consideration of the protest filed with said agent in connection therewith. If you acquiesce in the proposed adjustments as shown in this letter and the accompanying statement, you are requested to execute the enclosed form and forward it to

(Testimony of Dan O'Hanlon.)

the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:AR:B-10-CEJ.

If, however, you do not acquiesce in all of the proposed changes, you will be afforded an opportunity for hearing in the Unit at Washington upon request.

If no reply is received within 20 days from the date of this letter it will be assumed that no hearing is desired and the Bureau will proceed to close the case in the usual manner.

If after said hearing and consideration by this office of evidence or briefs of argument submitted, the Commissioner finally determines that there is a deficiency, you will be advised thereof by registered mail in accordance with the provisions of Section 274 of the Revenue Act of 1926. Should you not agree to the deficiency as finally determined by the Commissioner, you will be allowed 60 days from the date of mailing of the registered letter (not counting Sunday as the sixtieth day) in which to file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Respectfully,
C. B. ALLEN,
Deputy Commissioner.
By L. B. ROBINSON,
Head of Division.

Enclosures:
Statement
Form 866.
Form 882.

(Testimony of Dan O'Hanlon.)

STATEMENT

IT:AR:B-10
CEJ

Aug 14 1928

In re: Mr. J. Kammerdiner,
237 South Highland Avenue,
Los Angeles, California.

Year	Deficiency in Tax
1925	$ 4,220.70
1926	5,969.56
Total	$10,190.26

Reference is made to the report of the Internal Revenue Agent in Charge, San Francisco, California, covering your tax liability for the years 1925 and 1926, and to your protest submitted under date of June 28, 1928.

Careful consideration has been accorded your protest in connection with the agent's findings.

Your contention that a partnership existed between you and your wife during the years 1925 and 1926 and that your wife held a vested interest in such partnership as her separate property has been denied. As no specific evidence has been furnishd to substantiate your contention the total income received by you and Mrs. Kammerdiner during the years in question is considered to be community income taxable to you.

1925

Net income reported		$29,782.12
Add:		
1. Income transferred from wife's return		26,814.22
Net income adjusted		$56,596.34
Computation of Tax		
Net income subject to surtax		$56,596.34
Less:		
Dividends	$ 578.82	
Personal exemption and credit for dependents	4,700.00	5,278.82
Balance subject to normal tax		$51,317.52

(Testimony of Dan O'Hanlon.)

Normal tax at 1½% on $4,000.00	$ 60.00
Normal tax at 3% on $4,000.00	120.00
Normal tax at 5% on $43,317.52	2,165.88
Surtax on $56,596.34	3,889.45
Total tax	$ 6,235.33
Less:	
Credit of 25% for earned net income	41.05
Total tax assessable	$ 6,194.28
Tax previously assessed	1,973.58
Deficiency in tax	$ 4,220.70

Explanation of Changes

The reason for the increase in your tax liability has been explained above.

1926

Net income reported on return		$37,281.67
Add:		
1. Income transferred from wife's return		33,573.84
Total		$70,855.51
Deduct:		
2. Error in computation on return		999.00
Net income subject to surtax		$69,856.51
Less:		
Dividends	$ 737.50	
Personal exemption and credit for dependents	4,700.00	5,437.50
Balance subject to normal tax		$64,419.01
Normal tax at 1½% on $4,000.00		$ 60.00
Normal tax at 3 % on $4,000.00		120.00
Normal tax at 5% on $56,419.01		2,820.95
Surtax on $69,856.51		6,035.61
Total tax		$ 9,036.56

(Testimony of Dan O'Hanlon.)

Less:	
Credit of 25% for earned net income	74.67
Total tax assessable	$ 8,961.89
Tax previously assessed	2,992.33
Deficiency	$ 5,969.56

Explanation of Changes

1. Income reported on your wife's return has been included in your return for reasons explained above.

2. Due to errors in computation, income reported on your return was overstated by $999.00.

Payment should not be made until a bill is received from the Collector of Internal Revenue for your district, and remittance should then be made to him.

[Endorsed]: Filed Dec. 29, 1941.

Mr. Bloom: A letter dated July 12, 1929, being a report for the year 1927 from the Treasury Department, Internal Revenue Service, addressed to Mrs. J. Kammerdiner.

The Court: It may be received.

The Clerk: Plaintiff's Exhibit 14.

(The document referred to was received in evidence and marked "Plaintiff's Exhibit No. 14.")

(Testimony of Dan O'Hanlon.)

PLAINTIFF'S EXHIBIT No. 14

Treasury Department
Internal Revenue Service
728 South Hill Street
Los Angeles, California

Office of
Internal Revenue Agent in Charge

Mrs. J. Kammerdiner
237 South Highland Avenue
Los Angeles, California

In re: Income Tax
Date of report: Jul 12 1929
Year covered: 1927

Madam:

There is attached a statement of adjustments which this office proposes to recommend, affecting your income tax liability, and a form of waiver of your right to file a petition with the United States Board of Tax Appeals. If a deficiency is indicated and the adjustments suggested with respect thereto are satisfactory, and you desire that the recommendations be forwarded promptly to the Bureau at Washington for review and final determination, the waiver should be signed and forwarded to this office. Intetest is payable on deficiencies found due as set forth on the attached form 882.

If you do not agree with the conclusions set forth in the inclosed statement it is desired that every

(Testimony of Dan O'Hanlon.)

opportunity be afforded you to present to this office any objections or additional information. You are accordingly granted thirty days from date of this letter within which you may, if you so desire, protest the proposed adjustments. The protest and any additional statement of facts must be submitted to this office, executed in triplicate under oath, and should contain the following information:

(a) The name and address of the taxpayer (in the case of an individual the residence, and in the case of a corporation the principal office or place of business); (b) in the case of a corporation the name of the State of incorporation; (c) the designation by date and symbol of the letter advising of the proposed deficiency with respect to which the protest is made; (d) the designation of the year or years involved and a statement of the amount of tax in dispute for each year; (e) an itemized schedule of the findings to which the taxpayer takes exception; (f) a summary statement of the grounds upon which the taxpayer relies in connection with each exception; (g) in case the taxpayer desires a hearing, a statement to that effect; (h) in case the protest is prepared or filed by an attorney or agent it shall have thereon a statement signed by such attorney or agent showing whether or not he prepared it and whether or not the attorney or agent knows of his own knowledge that the facts therein are true.

(Testimony of Dan O'Hanlon.)

If a protest is filed it will be given careful consideration in this office before the recommendations are forwarded to Washington for action. In the event that you do not protest within the thirty-day period, the case will be forwarded immediately thereafter to the Bureau at Washington for review.

In the event the recommendations are not approved upon review in Washington, you will be notified and given opportunity to discuss the changes with this office, or should you fail to protest to this office, any protest which you may subsequently file with Washington will be referred to this office for consideration.

If a deficiency is indicated no remittance should be made until you receive notice of assessment from the Collector of Internal Revenue for your district.

Please acknowledge receipt by return mail.

Respectfully,

E. C. WRIGHT,

Internal Revenue Agent in Charge.

Inclosures:

Examining Officer:
Eskridge

In re: Mrs. J. Kammerdiner
237 South Highland Avenue
Los Angeles, California

STATEMENT OF TOTAL TAX LIABILITY

Year	Tax Previously Assessed	Adjustments Proposed in Accompanying Report		Correct Tax Liability
		Deficiency	Overassessment	
1927	$4,335.61	—	$4,335.61	None
Totals	$4,335.61	—	$4,335.61	None

(Testimony of Dan O'Hanlon.)

Schedule 1

Explanation of Items

Net income reported	$45,563.74
Net income adjusted	None

Income representing one half share of profits from business has been included in husband's return.

Schedule 2

Year 1927

Computation of Tax—Income Tax

Net income	None
Total tax assessable	None
Tax previously assessed	$4,335.61
Overassessment	$4,335.61

[Endorsed]: Filed Dec. 29, 1941.

Mr. Bloom: A letter from the Treasury Department, Internal Revenue Service, addressed to J. Kammerdiner, being dated July 12, 1929, being report for the year 1927.

The Clerk: 15 for plaintiff.

(The document referred to was received in evidence and marked "Plaintiff's Exhibit No. 15.")

(Testimony of Dan O'Hanlon.)

PLAINTIFF'S EXHIBIT No. 15

Treasury Department
Internal Revenue Service
728 South Hill Street
Los Angeles, California

Office of
Internal Revenue Agent in Charge

James Kammerdiner
237 South Highland Avenue
Los Angeles, California

In re: Income Tax
Date of report: Jul. 12, 1929
Year covered: 1927

Sir:

There is attached a statement of adjustments which this office proposes to recommend, affecting your income tax liability, and a form of waiver of your right to file a petition with the United States Board of Tax Appeals. If a deficiency is indicated and the adjustments suggested with respect thereto are satisfactory, and you desire that the recommendations be forwarded promptly to the Bureau at Washington for review and final determination, the waiver should be signed and forwarded to this office. Interest is payable on deficiencies found due as set forth on the attached form 882.

If you do not agree with the conclusions set forth in the inclosed statement it is desired that every opportunity be afforded you to present to this office

(Testimony of Dan O'Hanlon.)

any objections or additional information. You are accordingly granted thirty days from date of this letter within which you may, if you so desire, protest the proposed adjustments. The protest and any additional statement of facts must be submitted to this office, executed in triplicate under oath, and should contain the following information:

(a) The name and address of the Taxpayer (in the case of an individual the residence, and in the case of a corporation the principal office or place of business); (b) in the case of a corporation the name of the State of incorporation; (c) the designation by date and symbol of the letter advising of the proposed deficiency with respect to which the protest is made; (d) the designation of the year or years involved and a statement of the amount of tax in dispute for each year; (e) an itemized schedule of the findings to which the taxpayer takes exception; (f) a summary statement of the grounds upon which the taxpayer relies in connection with each exception; (g) in case the taxpayer desires a hearing, a statement to that effect; and (h) in case the protest is prepared or filed by an attorney or agent it shall have thereon a statement signed such attorney or agent showing whether or not he prepared it and whether or not the attorney or agent knows of his own knowledge that the facts therein are true.

(Testimony of Dan O'Hanlon.)

If a protest is filed it will be given careful consideration in this office before the recommendations are forwarded to Washington for action. In the event that you do not protest within the thirty-day period, the case will be forwarded immediately thereafter to the Bureau at Washington for review.

In the event the recommendations are not approved upon review in Washington, you will be notified and given opportunity to discuss the changes with this office, or should you fail to protest to this office, *any protest which you may subsequently file with Washington will be referred to this office for consideration.*

If a deficiency is indicated no remittance should be made until you receive notice of assessment from the Collector of Internal Revenue for your district.

Please acknowledge receipt by return mail.

Respectfully,

E. C. WRIGHT,

Internal Revenue Agent in Charge.

Inclosures: 1a

Examining Officer:
P. Eskridge

In re: James Kammerdiner
237 South Highland Avenue
Los Angeles, California

STATEMENT OF TOTAL TAX LIABILITY

Year	Tax Previously Assessed	Adjustments Proposed in Accompanying Report Deficiency	Overassessment	Correct Tax Liability
1927	$4,386.60	$9,619.95	—	$14,006.55
Totals	$4,386.60	$9,619.95	—	$14,006.55

(Testimony of Dan O'Hanlon.)

1927

Cause of additional tax is due to the disallowance of income from business reported as partnership income in the return of the wife, as shown in a separate report.

Taxpayer and wife filed separate returns, each reporting one half of profit from business.

Since investigation in prior years discloses that no partnership books are kept showing capital account, investment on profit and loss account, and that taxpayer and wife had no separate bank accounts, it is considered that the wife did not hold a vested interest in partnership. The total income is held to be taxable on a joint return.

Taxpayer is married, living with his wife, has two dependent children under eighteen years of age, and is chief support of mother-in-law.

Income from business was checked on copy of partnership return and found correct as reported. No record of partnership return in this office.

Schedule 1

Block Adjustments

		Return	Additions to Income	Deductions from Income	Corrected
4.	Income from business	$45,862.53	$45,862.53		$91,725.06
7.	Dividends	101.21	101.21		202.42
10.	Total income	$45,963.74	$45,963.74		$91,927.48
15.	Contributions	None		$400.00	400.00
17.	Total deductions	None			400.00
18.	Net income	$45,963.74	$45,963.74	$400.00	$91,527.48

Schedule 2

Explanation of Items

Net income reported	$45,963.74
Net income adjusted	91,527.48
Increase in income	$45,563.74

(Testimony of Dan O'Hanlon.)

Net income of $45,563.74 reported by taxpayer's wife has been included in joint return.

Schedule 3

Year 1927

Computation of Earned Income Credit
Income Tax

Earned net income		$18,385.50
Less personal exemption and credit for dependents		4,700.00
Balance		$13,685.50
Normal tax at 1½% on $4,000.00	$ 60.00	
Normal tax at 3% on $4,000.00	120.00	
Normal tax at 5% on $5,685.50	284.28	
Surtax on $18,385.50	155.42	619.70
Credit of 25%		$ 154.92

Twenty percent of net income from business equals $18,385.50.

Schedule 4

Year 1927

Computation of Tax—Income Tax

Net income (from Schedule 1)		$91,527.48
Less net loss		None
Income subject to surtax		$91,527.48
Less: Dividends	$ 202.42	
Personal exemption and credit for dependents	4,700.00	4,902.42
Balance subject to normal tax		$86,625.06
Normal tax at 1½% on $4,000.00	$ 60.00	
Normal tax at 3% on $4,000.00	120.00	
Normal tax at 5% on $78,625.06	3,931.25	
Surtax on $91,527.48	10,050.22	
		14,161.47
Total tax		$14,161.47

(Testimony of Dan O'Hanlon.)

Less: Credit of 25% for earned net income (from Schedule 3)	$ 154.92	
		154.92
Total tax assessable		$14,006.55
Tax previously assessed		4,386.60
Additional tax to be assessed		$ 9,619.95

[Endorsed]: Filed Dec. 29, 1941.

Mr. Bloom: A letter from the Treasury Department, dated October 14, 1929, to Mr. J. Kammerdiner, being a deficiency letter, commonly known as a 90-day letter.

The Clerk: 16.

(The document referred to was received in evidence and marked "Plaintiff's Exhibit No. 16.")

(Testimony of Dan O'Hanlon.)

PLAINTIFF'S EXHIBIT No. 16

"Exhibit A"

Treasury Department

Washington

Oct. 14, 1929.

Office of

Commissioner of Internal Revenue.

Mr. James Kammerdiner,
237 South Highland Avenue,
Los Angeles, California.

Sir:

In accordance with Section 274 of the Revenue Acc of 1926, you are advised that the determination of your tax liability for the years 1927 discloses a deficiency of $9,619.95, as shown in the statement attached.

The section of the law above mentioned allows you to petition the United States Board of Tax Appeals within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter for a redetermination of your tax liability.

However, If You Do Not Desire to Petition, you are requested to execute the inclosed Form 866 and forward both original and duplicate to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this

(Testimony of Dan O'Hanlon.)

agreement form will expedite the closing of your return by permitting an early assessment of any deficiencies and preventing accumulation of interest charges, since the interest period terminates thirty days after filing the agreement form, or on the date assessment is made, whichever is earlier; Whereas If No Agreement Is Filed, interest will accumulate to the date of assessment of the deficiencies.

Respectfully,
ROBT. H. LUCAS,
Commissioner.
By (Signed) DAVIS BURNET,
Deputy Commissioner.

Inclosures:
Statement
Form 866
Form 882

STATEMENT

IT:AR:B-9
WEF

Oct 14 1929

In re: Mr. James Kammerdiner,
237 South Highland Avenue,
Los Angeles, California.
Tax Liability

Year	Corrected Tax Liability	Tax Previously Assessed	Deficiency
1927	$14,006.55	$4,386.60	$9,619.95

The report of the Internal Revenue Agent in Charge at San Francisco, California, a copy of which has been furnished you, which explains in detail the determination of

(Testimony of Dan O'Hanlon.)

the deficiency has been reviewed and approved by this office.

Net income reported	$45,963.74
Add:	
1. Additional income from business	45,963.74
	$91,927.48
Less:	
2. Contributions allowed	400.00
Net income as adjusted	$91,527.48

Explanation of Adjustments

1. Gross income reported has been increased under Article 31, Regulations 69, $45,927.48 which represents income from your business which was reported on Mrs. Kammerdiner's return since an investigation of your case discloses that no partnership books are kept showing the capital accounts, partnership agreement, or separate bank accounts. It is, therefore, held that your wife did not hold a vested interest in the partnership, and that the total income is taxable on a joint return.

2. Contributions in the amount indicated above have been allowed as a deduction from gross income under Article 251, Regulations 69.

Computation of Tax

Net income subject to surtax		$91,527.48
Less:		
Dividends	$ 202.42	
Personal exemption and credit for dependents	4,700.00	4,902.42
Balance subject to normal tax		$86,625.06
Normal tax at 1½% on $4,000.00		$ 60.00
Normal tax at 3% on $4,000.00		120.00
Normal tax at 5% on $78,625.06		3,931.25
Surtax on $91,527.48		10,050.22
Total tax		$14,161.47

(Testimony of Dan O'Hanlon.)

Credit for earned net income	$ 154.92
Total tax assessable	$14,006.55
Tax previously assessed	4,386.60
Deficiency	$ 9,619.95

Inasmuch as Item One is the only issue, and is now pending before the United States Board of Tax Appeals for the years 1925 and 1926, formal notice of deficiency is mailed you at this time without affording you an opportunity for a hearing before the Unit.

Payment should not be made until a bill is received from the Collector of Internal Revenue for your district, and remittance should then be made to him.

[Endorsed]: Filed Dec. 29, 1941.

Mr. Bloom: A letter from the Treasury Department, Internal Revenue Service, addressed to Mrs. Jas. Kammerdiner, dated May 15, 1930, being report for the year 1928.

The Court: It is received.

The Clerk: Plaintiff's Exhibit 17. [145]

(The document referred to was received in evidence and marked "Plaintiff's Exhibit No. 17.")

(Testimony of Dan O'Hanlon.)

PLAINTIFF'S EXHIBIT No. 17

Treasury Department
Internal Revenue Service
Los Angeles, California

Office of
Internal Revenue Agent in Charge

Mr. Jas. Kammerdiner
237 South Highland Avenue
Los Angeles, California

In re: Income Tax
Date of report: May 15, 1930
Year covered: 1928

Madam:

There is attached a statement of adjustments which this office proposed to recommend, affecting your income tax liability, and a form of agreement as to final determination of tax liability. If the adjustments suggested are satisfactory and you desire an immediate review and final determination, the agreement, Form 866, should be signed by you and forwarded to this office. Interest is payable on deficiencies found due as set forth on the attached Form 882.

If you do not agree with the conclusions set forth in the inclosed statement it is desired that every opportunity be afforded you to present to this office any objections or additional information. You are

(Testimony of Dan O'Hanlon.)

accordingly granted thirty days from date of this letter within which you may, if you so desire, protest the proposed adjustments. The protest and any additional statement of facts must be submitted to this office, executed in triplicate under oath, and should contain the following information:

(a) The name and address of the taxpayer (in the case of an individual the residence, and in the case of a corporation the principal office or place of business); (b) in the case of a corporation the name of the State of incorporation; (c) the designation by date and symbol of the letter advising of the proposed deficiency with respect to which the protest is made; (d) the designation of the year or years involved and a statement of the amount of tax in dispute for each year; (e) an itemized schedule of the findings to which the taxpayer takes exception; (f) a summary statement of the grounds upon which the taxpayer relies in connection with each exception; (g) in case the taxpayer desires a hearing, a statement to that effect; and (h) in case the protest is prepared or filed by an attorney or agent it shall have thereon a statement signed by such attorney or agent showing whether or not he prepared it and whether or not the attorney or agent knows of his own knowledge that the facts therein are true.

(Testimony of Dan O'Hanlon.)

If a protest is filed it will be given careful consideration in this office before the recommendations are forwarded to Washington for action. In the event that you do not protest within the thirty-day period, the case will be forwarded immediately thereafter to the Bureau at Washington for review.

In the event the recommendations are not approved upon review in Washington, you will be notified and given opportunity to discuss the changes with this office, or should you fail to protest to this office, any protest which you may subsequently file with Washington will be referred to this office for consideration.

If a deficiency is indicated no remittance should be made until you receive notice of assessment from the Collector of Internal Revenue for your district.

Please acknowledge receipt by return mail.

Respectfully,

ALF OFTEDAL,

Internal Revenue Agent in Charge.

Inclosures:

Statement of adjustments

Forms 866 and 882

(Testimony of Dan O'Hanlon.)

Name—Mrs. Jas. Kammerdiner
237 South Highland Avenue
Los Angeles, California

Examining Officer:
W. D. Chandler

STATEMENT OF TOTAL TAX LIABILITY

Year	Tax Previously Assessed	Adjustments Proposed in Accompanying Report Deficiency	Overassessment	Correct Tax Liability
1928	$12,382.42	—	$12,312.74	$69.68
Totals				

Note

The amount shown in the first column of the above statement is the amount assessed on the original return except as indicated in the following summary of adjustments previously made:

(Followed by form not filled in.)

In re: Mrs. Jas. Kammerdiner.

Table of Contents

Preliminary Statement
Schedule 1 Block adjustments 1928
2 Earned income 1928
3 Computation of tax 1928

Preliminary Statement

The overassessment is occasioned by taxing to taxpayer's husband, J. Kammerdiner, the major portion of income returned by taxpayer as being received from partnership of Mr. and Mrs. J. Kammerdiner, which is held not to be a partnership.

The findings were discussed with taxpayer who does not agree to the adjustment and declines to sign agreement as to overassessment.

Taxpayer was married and living with her husband and three dependents at end of taxable year. Husband, J. Kammerdiner, filed separate return and claimed one half of personal exemption and credit for one dependent. In view of the fact that the major portion of the income has been transferred to return of husband he has also been given the entire personal exemption and credit for dependents.

Schedule 1

In re: Mrs. Jas. Kammerdiner. Block Adjustments 1928

	Return	Additions to Income	Deductions from Income	Corrected
3. Interest		$ 1,755.65√		$ 1,755.65√
4. Partnership	$84,254.30√		$84,254.30√	
5. Rents		87.29√		87.29√
6. Sales		3,027.87√		3,027.87√
7. Dividends	154.30√		.01	154.29√
9. Other income		1,279.41√		1,279.41√
10. Total	$84,408.60√			$ 6,304.51√
12. Taxes			877.70√	877.70√
15. Contributions	200.00√			200.00√
17. Total	$ 200.00√			$ 1,077.70√
18. Net Income	$84,208.60√	$ 6,150.22	$85,132.01	$ 5,226.81√
			*Comput. OK	L.C.F.

*This line and check marks written in with pencil.

(Testimony of Dan O'Hanlon.)

Schedule 1-A
Explanation of Items

Item 3—Interest:

Reported	None
Corrected	$ 1,755.65
Difference	$ 1,755.65

See explanation in report on taxpayer's husband, J. Kammerdiner.

Item 4—Partnership:

Reported	$84,254.30
Corrected	None
Difference	$84,254.30

See explanation in report on taxpayer's husband, J. Kammerdiner.

Item 5—Rents:

Reported	None
Corrected	$ 87.29
Difference	$ 87.29

See explanation in report on taxpayer's husband, J. Kammerdiner.

Item 6—Sales:

Reported	None
Corrected	$ 3,027.87
Difference	$ 3,027.87

See explanation in report on taxpayer's husband, J. Kammerdiner.

Item 9—Other Income:

Reported	None
Corrected	$ 1,279.41
Difference	$ 1,279.41

See explanation in report on taxpayer's husband, J. Kammerdiner.

(Testimony of Dan O'Hanlon.)

Item 12—Taxes:

Reported	None
Corrected	$ 877.70
Difference	$ 877.70

See explanation in report on taxpayer's husband, J. Kammerdiner.

Schedule 2

Year ended 12-31-28

Computation of Earned Income Credit—Income Tax

Earned net income		$ 5,000.00
Less personal exemption and credit for dependents		—
Balance		$ 5,000.00
Normal tax at 1½% on $4,000.00	$ 60.00√	
Normal tax at 3% on $1,000.00	30.00√	
Total tax		$ 90.00√
Credit of 25%		$ 22.50√

Schedule 3

Year ended 12-31-28

Computation of Income Tax

Net income (from Schedule 1)		$ 5,226.81√
Less net loss	—	
capital net gain	—	
Income subject to surtax		$ 5,226.81
Less: Dividends	154.29√	
Interest on Liberty Bonds, etc.	—	
Personal exemption and credit for dependents	—	154.29
Balance subject to normal tax		$ 5,072.52√
Normal tax at 1½% on $4,000.00	60.00√	
Normal tax at 3% on $1,072.52	32.18√	
Total tax		$ 92.18√

(Testimony of Dan O'Hanlon.)

Less: Credit of 25% for earned net income (from Schedule 2)	22.50	
		22.50√
Total tax assessable		$ 69.68√
Tax previously assessed		12,382.42√

*Comput. OK L.C.F.

*This line and check marks written in with pencil.

[Endorsed]: Filed Dec. 29, 1941.

Mr. Bloom: A letter from the Treasury Department, Internal Revenue Service, addressed to J. Kammerdiner, dated May 15, 1930, being a report for the year 1928.

The Clerk: 18.

(The document referred to was received in evidence and marked "Plaintiff's Exhibit No. 18.")

(Testimony of Dan O'Hanlon.)

PLAINTIFF'S EXHIBIT No. 18

Treasury Department
Internal Revenue Service
Los Angeles, California

Office of
Internal Revenue Agent in Charge

James Kammerdiner
237 South Highland Avenue
Los Angeles, California

In re: Income Tax
Date of report: May 15 1930
Year covered: 1928

Sir:

There is attached a statement of adjustments which this office proposes to recommend, affecting your income tax liability, and a form of agreement as to final determination of tax liability. If the adjustments suggested are satisfactory and you desire an immediate review and final determination, the agreement, Form 866, should be signed by you and forwarded to this office. Interest is payable on deficiencies found due as set forth on the attached Form 882.

If you do not agree with the conclusions set forth in the inclosed statement it is desired that every opportunity be afforded you to present to this office any objections or additional information. You are accordingly granted thirty days from date of

(Testimony of Dan O'Hanlon.)

this letter within which you may, if you so desire, protest the proposed adjustments. The protest and any additional statement of facts must be submitted to this office, executed in triplicate under oath, and should contain the following information:

> (a) The name and address of the taxpayer (in the case of an individual the residence, and in the case of a corporation the principal office or place of business); (b) in the case of a corporation the name of the State of incorporation; (c) the designation by date and symbol of the letter advising of the proposed deficiency with respect to which the protest is made; (d) the designation of the year or years involved and a statement of the amount of tax in dispute for each year; (e) an itemized schedule of the findings to which the taxpayer takes exception; (f) a summary statement of the grounds upon which the taxpayer relies in connection with each exception; (g) in case the taxpayer desires a hearing, a statement to that effect; and (h) in case the protest is prepared or filed by an attorney or agent it shall have thereon a statement signed by such attorney or agent showing whether or not he prepared it and whether or not the attorney or agent knows of his own knowledge that the facts therein are true.

If a protest is filed it will be given careful consideration in this office before the recommendations

(Testimony of Dan O'Hanlon.)

are forwarded to Washington for action. In the event that you do not protest within the thirty-day period, the case will be forwarded immediately thereafter to the Bureau at Washington for review.

In the event the recommendations are not approved upon review in Washington, you will be notified and given opportunity to discuss the changes with this office, or should you fail to protest to this office, *any protest which you may subsequently file with Washington will be referred to this office for consideration.*

If a deficiency is indicated no remittance should be made until you receive notice of assessment from the Collector of Internal Revenue for your district.

Please acknowledge receipt by return mail.

Respectfully,

ALF OFTEDAL,

Internal Revenue Agent in Charge.

Inclosures:

Statement of adjustments

Forms 866 and 882

(Testimony of Dan O'Hanlon.)

Name—J. Kammerdiner
237 South Highland Avenue
Los Angeles, California

Examining Officer:
W. D. Chandler

STATEMENT OF TOTAL TAX LIABILITY

Year	Tax Previously Assessed	Adjustments Proposed in Accompanying Report Deficiency	Overassessment	Correct Tax Liability
1928	$12,543.70	$19,716.33√	—	$32,260.03
Totals				

Note

The amount shown in the first column of the above statement is the amount assessed on the original return except as indicated in the following summary of adjustments previously made:

(Followed by form not filled in.)

Table of Contents

Preliminary Statement
Schedule 1 Block Adjustment 1928
2 Earned Income 1928
3 Computation of Tax 1928

Preliminary Statement

The additional tax is occasioned by inclusion of income which had been returned by wife as partnership income.

The findings were discussed with taxpayer who does not agree to the adjustments and declines to sign agreement consenting to assessment.

Taxpayer was married, living with wife and had three dependents at end of taxable year. Wife filed separate return and claimed one half of personal exemption and credit for two dependents. In view of the fact that the major portion of the income returned by wife has been included in husband's return he has been allowed entire personal exemption and credit for dependents.

Schedule 1

In re J. Kammerdiner. Block Adjustments 1928

	Return	Additions to Income	Deductions from Income	Corrected
1. Salary	$ 600.00			$ 600.00
2. Business		$160,349.15√		160,349.15√
3. Interest		1,755.66√		1,755.66√
4. Partnership	84,254.30√		$84,254.30√	
5. Rents		87.30√		87.30√
6. Sales		3,027.87		3,027.87√
7. Dividends	154.30√			154.30√
9. Other income		1,279.41√		1,279.41√
10. Total	$85,008.60			$167,253.69√
12. Taxes			877.70√	877.70√
15. Contributions	200.00			200.00
17. Total	$ 200.00			$ 1,077.70√
18. Net income	$84,808.60	$166,499.39	$85,132.00	$166,175.99√

*Comp. O.K.

*This line and check marks written in with pencil.

(Testimony of Dan O'Hanlon.)

Schedule 1-A

Explanation of Items

Item 2—Business:

Reported	None
Corrected	$160,349.15
Difference	$160,349.15

The income reported above was reported as partnership income on Form 1065 for Mr. and Mrs. J. Kammerdiner and there was also included in that return income from interest, rents, dividends and profit on sales of stock. Examining officer has segregated the income from operation of the "Rotary Jar" business, which is considered as income to husband, from that which was derived from jointly owned property and shows same above as income of husband. Income from jointly owned property is allocated between husband and wife on a fifty fifty basis.

Income from the "Rotary Jar" business is shown in the following schedule.

Schedule 1-B

Explanation of Items

Income from rental of "Rotary Jars"		$127,120.17√
Income from sale of "Rotary Jars"		115,159.00√
Income from Mid-Continent rentals		1,162.50√
Income from San Joaquin rentals		3,790.54√
Income from Wyoming and Montana rentals		706.92√
Income from Assemblies rentals		1,598.00√
Total income		$249,537.13√
Deductions:		
Expense of manufacturing and repairs	$ 65,189.62√	
General expense, advertising, etc.	4,588.03√	
Commissions	16,475.00√	
Automobile expense	1,011.17√	
Automobile depreciation	1,166.66√	
Loss on sale of automobile	757.50√	89,187.98√
Gain from "Rotary Jar" business		$160,349.15√

(Testimony of Dan O'Hanlon.)

The entire income from the "Rotary Jar" business is held to be income of J. Kammerdiner in view of the fact that no partnership exists. See report under even date on alleged partnership of Mr. and Mrs. J. Kammerdiner.

Schedule 1-C

Explanation of Items

In arriving at the above income the following adjustments have been made:

Amount shown on Line 3, Form 1065....	$158,286.97
Plus capital item charged to expense.....	2,385.60√
	$161,672.57√
Less income from ranch at Olive.....	1,323.42
	$160,349.15√

Disallowance of capital expenditure is explained as follows. Taxpayer developed and patented a "Rotary Jar" in 1923. In 1928 he purchased the Scanlon patent for which he paid $2,520.00. Taxpayer states that his sole reason for purchasing this patent was to protect his own original patent and that the patent which he purchased is of no value to him aside from the protection which he sought. In view of the fact that taxpayer states that the patent was purchased for the purpose of preventing its development along lines which might result in the manufacture of a tool adapted to produce results similar to those produced by taxpayer's patented tool, it is believed that depreciation should be allowed on the basis of the remaining life of the original patent rather than on the life of the patent which was purchased. Depreciation is, therefore, computed on that basis.

The original patent was issued in October 1923 and in May 1928, at which time the Scanlon patent was purchased, had a remaining life of twelve and one half years. Therefore, the annual depreciation allowable would be

$2,520.00 divided by 12.5 equals $201.60, and as the patent was purchased in May 1928 the amount allowable for that year would be two thirds of $201.60 or $134.40.

(Testimony of Dan O'Hanlon.)

The full cost of the patent, $2,520.00 was charged to general expense and examining officer has added to income $2,385.40, which is the difference between the cost and the allowable depreciation.

The books and accounts kept for the alleged partnership are on the cash receipt and disbursement basis. Taxpayer does no manufacturing of his tool but hired them made and the entire cost is used as an expense item. No inventories are made and no capital accounts are kept. A considerable number of the tools, "Rotary Jars" are owned by taxpayer and are in use on a rental basis in the United States, while those in use in foreign countries are sold outright.

Schedule 1-E

Explanation of Items

Income from ranch at Olive is the joint income of husband and wife and has, therefore, been excluded from income from business and allocated on a fifty fifty basis in Item 9 of their separate returns.

[Pencil Notation]:

661.71—
617.70

Schedule 1-F

Item 3—Interest:

Reported	$ None
Corrected	1,755.66
Difference	$ 1,755.66

Income from interest reported on Line 5 of Form 1065 was derived from jointly owned property of husband and wife and has, therefore, been allocated on a fifty fifty basis in their separate returns.

Item 4—Partnership:

Reported	$84,254.30
Corrected	None
Difference	$84,254.30

See explanation in Item 2.

(Testimony of Dan O'Hanlon.)

Schedule 1-G

Explanation of Items

Item 5—Rents:

Reported		None
Corrected	$	87.30
Difference	$	87.30

Income from rents reported on Line 7 of Form 1065 was derived from property owned jointly by husband and wife and has, therefore, been allocated to them on a fifty fifty basis in their separate returns.

Item 6—Sales:

Reported		None
Corrected	$	3,027.87
Difference	$	3,027.87

The gain from sales reported on Line 9 of Form 1065 was derived from property owned jointly by husband and wife and has, therefore, been allocated to them on a fifty fifty basis in their separate returns.

Schedule 1-H

Explanation of Items

Item 7—Dividends.

No change has been made in this item. It was included on Line 10 of Form 1065, and properly allocated on a fifty fifty basis in separate returns of husband and wife.

Item 9—Other Income:

Reported		None
Corrected	$	1,279.41
Difference	$	1,279.41

Income from ranch at Olive, which was included in Line 3 of Form 1065 and income from joint account which was included in Line 4 of Form 1065 was derived from property owned jointly by husband and wife and has, therefore, been allocated on a fifty fifty basis in their separate returns.

(Testimony of Dan O'Hanlon.)

Schedule 1-I

Item 10—Taxes:

Reported	None
Corrected	$ 877.70
Difference	$ 877.00

The item of taxes on Line 17 of Form 1065 was paid in connection with property owned jointly by husband and wife and therefore is allocated on a fifty fifty basis in their separate returns.

Schedule 2

Year ended 12-31-28

Computation of Earned Income Credit—
Income Tax

Earned net income	$30,000.00
Less personal exemption and credit for dependents	4,700.00√
Balance	$25,300.00√
Normal tax at 1½% on $4,000.00	$ 60.00√
Normal tax at 3% on $4,000.00	120.00√
Normal tax at 5% on $17,300.00	865.00√
Surtax on $30,000.00	880.00√
Total tax	$ 1,925.00√
Credit of 25%	$ 481.25√

Taxpayer is entitled to maximum earned income of $30,000.00.

Schedule 3

Year ended 12-31-28

Computation of Tax—
Income Tax

Net income (from Schedule 1)	$166,175.99√
Less: Net loss	—
Capital net gain	—
Income subject to surtax	$166,175.99

(Testimony of Dan O'Hanlon.)

Less: Dividends	$ 154.30√	
Personal exemption and credit for dependents	4,700.00√	
Interest on Liberty bonds, etc.	—	
		4,854.30√
Balance subject to normal tax		$161,321.69√
Normal tax at 1½% on $4,000.00	$ 60.00√	
Normal tax at 3% on $4,000.00	120.00√	
Normal tax at 5% on $153,321.69	7,666.08√	
Surtax on $166,175.99	24,895.20√	32,741.28√
Total tax		$ 32,741.28√
Less: Credit of 25% for earned net income (from Schedule 2)	481.25	
Income tax paid at source	—	
Taxes paid to a foreign country	—	
		481.25√
Total tax assessable		32,260.03√
Tax previously assessed		12,543.70√
Additional tax to be assessed		$19,716.33√

*Comput. OK L.C.F.

*This line and check marks written in with pencil.

[Endorsed]: Filed Dec. 29, 1941.

Mr. Bloom: That is all, Mr. O'Hanlon.

JAMES KAMMERDINER

called as a witness by and on behalf of the Government under Rule 43, having been previously duly sworn, testified as follows:

Direct Examination

By Mr. Mitchell:

Q. Mr. Kammerdiner, will you state of what your wife's activities consisted with respect of obtaining your original [146] basic patent.

The Court: Does the Government intend to show on cross examination that she helped to invent it?

Mr. Mitchell: No, your Honor. She helped perfect it and some of her funds went into the procurement of the patent, some of her own and separate funds and she had more to do with the procurement of the patent than the plaintiff himself.

The Court: All right. Go ahead.

The Witness: I was very busy out in the field and she found someone she had quite a bit of confidence in to select a patent attorney. I went up there and instructed the patent attorney what to apply for. She had nothing to do with that other than select the attorney, which I think was a very good one.

By Mr. Mitchell:

Q. And the fees that were paid to the Patent Office, and the fees that were paid to the patent attorney came from what source? From your joint bank accounts? A. Yes, sir. [147]

(Testimony of James Kammerdiner.)

The Court: Everything, as a matter of fact, from the time you began accumulating money to the time of her death came from these various accounts?

The Witness: Yes.

The Court: There wasn't any "mine and thine," it was "ours" all the time, wasn't it?

The Witness: That is the way it was, yes, every moment of it.

The Court: If you borrowed the money from the bank for your business, why, whether you signed the note or she signed with you, why, you paid it out of the income you received from the patents, from your oil wells, and from your real estate?

The Witness: Yes.

The Court: Or from whatever source?

The Witness: Yes.

The Court: All right. In view of that, I don't think you need to go into any particularization very much.

By Mr. Mitchell:

Q. Mr. Kammerdiner, you did feel it was necessary to protect your basic patent by purchasing other similar patents, did you not; those which you purchased, I mean?

Mr. Bloom: Objected to as incompetent, irrelevant and immaterial.

The Court: Overruled.

The Witness: Yes, I should say it was, yes.

[148]

(Testimony of James Kammerdiner.)

By Mr. Mitchell:

Q. If you hadn't your basic patent, you would have had competitors that would have reduced the amount of your income; isn't that true?

A. It is possible. It wasn't——

The Court: They might have had a nuisance value. Sometimes you buy up a lawsuit for nuisance value and sometimes you buy a patent because somebody might say you are infringing. And if you make an improvement and it is successful, somebody who never has had anything but a paper patent, may come up years afterward and try to divide the profits.

By Mr. Mitchell:

Q. Would you say at the time of your wife's death the value of all of the patent rights, then owned, was greater than they would have been had you not purchased these protective patents?

A. I don't think I have a patent that is worth hauling home.

Q. Not worth what you paid for it?

A. I don't think there is one outside of the original one that is really a patent, no, sir.

Q. But nevertheless you did purchase them to protect the basic patent?

A. Yes. I would try to buy one tomorrow if necessary.

The Court: It is cheaper than a lawsuit, isn't it?

The Witness: Yes, much better. I got in one

(Testimony of James Kammerdiner.)

lawsuit [149] that cost me $125,000.00 trying to stop one infringer.

The Court: All right.

Mr. Mitchell: If your Honor please, I intend to read considerable of the transcript into the record from the Board of Tax Appeals case.

Mr. Smith: Is there any way we could shorten this, if your Honor please?

The Court: I don't know what is in the record. The [150] only way would be to have it received without objection and then I will feel safe.

Mr. Smith: I am just wondering——

The Court: I have been at this judging for 15 years, gentlemen, and the most dangerous thing to do is to accept an entire record from another case because you are burdening yourself with a lot of testimony as to which you are entirely in the dark. You gentlemen are familiar with the procedure there. If you will offer no objection then I will take it and then you can pick out things you want and each of you can point those out in your argument, the portions that you think are material, but unless you do that I won't take it; it is too dangerous. [151]

Mr. Smith: He is putting it in on the question of estoppel and it is our objection that it does not prove any of the issues that he has.

Mr. Mitchell: That is not the only purpose, your Honor. The chief purpose is the declarations

against interest and admission by the plaintiff. [152]

Mr. Mitchell: The only issue that was decided was the question whether or not there was a partnership.

The Court: Do you want to offer it limited to the question of any admissions as to the partnership basis?

Mr. Mitchell: And the ownership of the property and the details.

The Court: And not to any question of estoppel?

Mr. Mitchell: Estoppel, so far as the second defense is concerned, no, not misrepresentations or representations to the Commissioner that the Government relied upon to its detriment, no, not that form of estoppel.

The only decision of which the Court will take judicial knowledge covers the third defense, which is an adjudication upon admissions of fact between the parties under a different cause of action is conclusive. That is the third point.

The Court: That is not estoppel, that is res judicata.

Mr. Mitchell: It is res judicata or a bar of some type. The point in the third defense is that the decision of the [154] Board upon questions of fact in an action between the same parties in another action is conclusive.

The Court: Res judicata arises from the judg-

ment of the Court in the light of the issues raised by the pleadings, not by the evidence given.

Mr. Mitchell: That is true.

The Court: All right. This is offered as merely having bearing upon the ownership of the property as testified to before the Board by the parties interested in that particular proceeding.

Mr. Mitchell: Consisting of admissions and declarations against interest whatever they are. How about that?

Mr. Smith: We will withdraw our objection.

The Court: And it may be received for that purpose. The whole thing may be received and either side is at liberty to call the Court's attention to any portion of the transcript in their briefs.

It is now received in evidence but it will retain its same number.

The Clerk: Defendant's Exhibit 16.

(Defendant's Exhibit 16 previously marked for identification was received in evidence.)

[155]

DEFENDANT'S EXHIBIT No. 16

Official Report of Proceedings
Before the
U. S. Board of Tax Appeals

Docket No. 41643 and 46555

J. KAMMERDINER, et al.,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Hearing at Los Angeles, Calif.
June 10, 1931.

Appearances:

John B. Milliken, Esq., and
George H. Proctor, Esq.,
on behalf of the Petitioners.

Philip M. Clark, Esq., (Clarence M. Charest, Esq., General Counsel, Bureau of Internal Revenue), on behalf of the Commissioner of Internal Revenue, Respondent.

PROCEEDINGS

The Clerk: Appeals of J. Kammerdiner, Docket 41,643, and J. A. Kammerdiner, Docket 46,555.

Mr. Milliken: The petitioners are ready.

The Member: Mr. Clark will be here in a minute or two, I guess. We will call the other cases on the calendar for today.

Defendant's Exhibit No. 16—(Continued)

(Thereupon the Member proceeded to the transaction of other business and at 10:20 o'clock the hearing was resumed as follows:)

The Clerk: Appeals of J. Kammerdiner, Docket 41,643, and J. A. Kammerdiner, Docket 46,555.

The Member: The petitioner is represented by J. B. Milliken, and the respondent by Mr. Clark.

Mr. Milliken, make your opening statement.

STATEMENT OF CASE FOR PETITIONER

Mr. Milliken: This case, having two docket numbers, involves deficiencies for three years, 1925, 1926 and 1927. One issue is common to all three years, namely, whether or not there was a partnership existing between Mr. and Mrs. Kammerdiner for each of the years.

As I understand it, their income is not in dispute, and if they be not a partnership, their deficiency is correctly computed. But, if there be a partnership, then we claim that the returns should stand as they were made, by each of them reporting one-half each of the income of the partnership.

The evidence will show that practically the entire income derived by Mr. and Mrs. Kammerdiner during the three years in question was derived from the profits received from a patent known as a rotary jar patent, and that is practically the entire source of income through all of the years.

I feel that it is such a simple question, and one which the Board has dealt with so often—in fact, I

Defendant's Exhibit No. 16—(Continued)

just made a spot check through the volumes of the Board of Tax Appeals from 1 to 22, inclusive, and I find there is an average of two partnership cases in every volume, between husband and wife. It is a question, after all, that it seems to me should be decided, if your Honor is so inclined here this morning, as to whether this is or is not a partnership between them. The facts, I think, will be clear, and the law certainly is clear, and certainly the decisions of the Board are almost legion on the question.

EVIDENCE FOR PETITIONERS.

Thereupon, the petitioners, to maintain the material averments of their petitions, introduced the following evidence, to-wit:

Mr. Milliken: Call Mr. Kammerdiner.

Thereupon——

J. A. KAMMERDINER

was called as a witness by and on behalf of the petitioners, and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Milliken:

Q. How long have you been a resident of California? A. Thirty years.

Q. What has been your occupation during those thirty years, if it has been continuous?

A. The oil business.

Defendant's Exhibit No. 16—(Continued)
(Testimony of J. A. Kammerdiner.)

Q. The oil business? A. Yes, exclusively.

Q. In what phase of the oil business are you interested, or have you been employed in?

Q. For whom did you work in the early stages of your employment, for yourself, or for others?

A. For others.

Q. Who were the others that you worked for?

A. The Standard Oil Company, the Union Oil Company, and the Associated Oil Company, the three big companies.

Q. Are they, or are they not, three of the representative oil companies on the Pacific Coast and in Southern California? A. Yes.

Q. When were you married?

Q. Are you still living together as husband and wife? A. Yes, sir.

Q. And have you been continuously since the date of your marriage? A. Yes.

Q. Had your wife been engaged in any occupation, prior to your marriage to her, to your knowledge? A. Yes, sir.

Q. What occupation had she been engaged in?

A. Office work.

Q. Office work?

A. Yes, in a brokerage firm.

Q. Office work and with a brokerage firm?

A. Yes.

Q. Subsequent to your marriage, as I understand it, you continued on in the oil business, the oil drilling work? A. Yes, sir.

Defendant's Exhibit No. 16—(Continued)

(Testimony of J. A. Kammerdiner.)

Q. Did your wife render any service with respect to your employment during this period?

A. Yes, sir.

Q. What service did she render?

A. Shortly after we were married, I was superintendent of the Associated Oil Company's property at Le Brea. In connection with my work they gave me on the set out there between my wife and I, we were to take care of the boarding house while we were drilling the oil well. My wife took it and I believe held it for six years, which was quite a job for those days.

Q. Do your knowledge, did your wife run the boarding house at a profit, from a financial standpoint to her? A. Yes.

Q. Did she save any money as the result of it, to your knowledge? A. Yes.

Q. Without being exact—and I assume that no husband is exact as to what his wife's savings are—do you know, in a general way, what she did save? Was it a few hundred dollars?

A. Several thousand dollars.

Q. Several thousand dollars? A. Yes.

Q. Were you the inventor of what is known as the rotary jar patent? A. Yes, sir.

Q. Would you explain just briefly what you sought to accomplish by your invention, this patent, and what it does accomplish? I don't want you to go into a lot of details, but just tell, if you can, briefly.

Defendant's Exhibit No. 16—(Continued)
(Testimony of J. A. Kammerdiner.)

A. Well, while I was working with one of these companies, there was a time I had eighteen rigs—that means eighteen wells—to take care of at one time, and one morning there were nine out and eight that were fishing?

Q. What do you mean by fishing?

A. They had lost parts of the drill pipe, the drill bits, and so on, in the hole.

I did not do any advertising at that time, except just around in the field we did advertise, and in a very short time I had ten or twelve jobs a day.

Q. I think you have explained in a general way what your device sought to accomplish and did accomplish. Had you accumulated any property—I am speaking about at the time, now, prior to the securing of the patent on that invention?

A. A small amount, a very small amount.

Q. Would you say that your wife and your accumulations was about equal?

A. About equal, yes.

Q. When did you apply for the patent on this device? A. October 22, 1922.

Q. How long was it after the application was filed until the patent was granted by the United States Patent Office?

A. One year.

Q. About one year?

A. Yes, twelve months.

Q. When did you begin manufacture, if you did begin it, prior to the actual granting of the patent of this device?

Defendant's Exhibit No. 16—(Continued)
(Testimony of J. A. Kammerdiner.)

A. April, I believe, of 1923.

Q. April of 1923? A. Yes, sir.

Q. Did you and your wife have any understanding; and if so, what was it, in April, 1923, or at any time in 1923, with respect to the marketing and sale and ownership of this patent?

A. We did. Immediately after the first trying of the first tool, it was decided that I would take the tool in the field, and she would do the office work, and if we made any money we would divide it; and if we lost any money, we would stand the losses.

Q. On what basis were you to divide the profits and share the losses?

A. Well, fifty-fifty, the best we could agree in a case of that kind.

Q. All right, you agreed then, did you, that she would get one-half, if you made any gains?

A. Yes, sir.

Q. And she would share one-half of the losses, if you suffered any losses? A. Yes, sir.

Q. Did you, or did you not, agree, that the other property, as well as the property of your wife, should be used incident to the manufacture and sale of these patented articles?

A. Yes, sir.

Q. Who was responsible for insisting that you obtain a patent with respect to this device?

A. My wife.

Q. Why did she insist upon that, if you know, or did she state to you?

Defendant's Exhibit No. 16—(Continued)
(Testimony of J. A. Kammerdiner.)

A. Well, I don't know that she gave any particular reason, but she insisted very strongly that I should make application for the patent. I was quite busy.

Q. Who secured the lawyer, the patent lawyer, with respect to the application for the patent?

A. My wife did.

Q. Who made the investigations, if anyone, with respect to the ability of a good patent attorney who would protect your interest in this matter?

A. My wife.

Q. Did you turn all of these matters over to her incident to the securing of the patent, and getting the patent attorney

A. Well, I would not say that, no, sir; she took that part on her own initiative, and located the lawyer.

Q. Now, you have stated that in April of 1923 you and your wife had this agreement or understanding. Did you, or did you not, agree with each other as to what services you were to perform, and what services she was to perform?

A. We did, yes, sir.

Q. And what did you agree that each of you should do?

A. That I should do the field work and my wife was to line up the office work.

Q. And what do you mean by that, that you were to do the field work?

A. These drills—at that time, no one in the

Defendant's Exhibit No. 16—(Continued)
(Testimony of J. A. Kammerdiner.)

country knew how to run them; did not know what they were for. I took it to—I took this tool to what I figured was the best oil man in the country and was going to give him a half interest in it. Really, before I made that application for patent, I figured he would put up the money and we could do it, but he turned it down, saying it was too complicated; that it would not work out; and in that way, I needed a partner, and my wife was the partner from then on.

Q. Mr. Kammerdiner, did you go out in the field and perform the service which you agreed to perform? A. Yes.

Q. Did your wife attend to the office and the business end of it, as she agreed to do?

A. She did, yes, sir.

Q. Now, explain what service your wife performed incident to attending to the business end of it. Explain what you mean by that and what she did, of your own knowledge.

A. We did what we figured was a very nice business, in time. I never made out a bill, I never collected a dollar, and never kept the books in any way. My wife did all that all the way up the line.

Q. Was an office maintained at any place?

A. In our home.

Q. Who was in charge of that office?

A. My wife.

Q. Did your wife have domestic help in the home prior to April, 1923? A. No, sir.

Defendant's Exhibit No. 16—(Continued)
(Testimony of J. A. Kammerdiner.)

Q. Was domestic help employed in the home after the partnership was entered into?

A. Yes, sir.

Q. For what reason did you employ domestic help?

A. Well, it gave her more time to take care of the business. That was bringing in money, and it gave her—it took a good part of her time, taking care of the essential things in charge of the business.

Q. If orders were received—were orders received during the years 1925, 1926 and 1927 for rotary jars? A. Yes, sir.

Q. Who received those orders?

A. My wife mostly; occasionally, I would catch one of them.

Q. Did you manufacture the jars yourself?

A. No, sir.

Q. How did you cause them to be manufactured?

A. Through shop work.

Q. Who arranged the details of the manufacture—of the contract with respect to the shop work?

A. I believe I did that, after I consulted my wife on those matters, and comparing notes of the shops that we had been doing—that she had lined up. She had lined up shops that we were figuring were going to do our work cheaper, or a little cheaper than the one we had before.

Q. Did your wife pass upon all contracts with

Defendant's Exhibit No. 16—(Continued)

(Testimony of J. A. Kammerdiner.)

respect to the manufacture of these patented articles by others? A. Yes, sir.

Q. Would she give orders to others?

A. Yes, sir.

Q. To other manufacturers with respect to their bills? A. Yes, sir.

Q. Did she pass upon the sufficiency or insufficiency of the bills? A. Yes, sir.

Q. Did your wife devote herself continuously to the business end of this business?

A. Continuously, yes, sir. I would say with the exception of occasionally two weeks, of which we would take a vacation to the mountains, or some other time,—outside of that, continuously, her time was taken for the business.

Q. What books were kept, if any, for this business or this partnership?

A. My wife kept the books.

Q. Your wife kept all of the books?

A. All of them, yes, sir.

Q. I show you three books that are labelled the years 1925, 1926 and 1927, and will ask you if you have seen these books heretofore?

A. Yes, sir.

Q. In whose handwriting are the books?

A. My wife's.

Q. Did you ever make an entry in these books?

A. Not one, no, sir.

Q. Did you ever collect a bill?

A. Not one.

Defendant's Exhibit No. 16—(Continued)
(Testimony of J. A. Kammerdiner.)

Q. Did you ever bill out a client?

A. No, sir.

Q. Who did that? A. My wife.

Q. What did you do with—who made the collections? A. My wife.

Q. What did she do with the money that she collected?

A. She put it in the joint account in the bank.

Q. Well, how was that account kept; in whose names was it?

A. James Kammerdiner and Mrs. James Kammerdiner.

Q. Did each have a right to draw against that bank account? A. Yes.

Q. Were all the funds derived from this patented article, deposited in those bank accounts?

A. Yes.

Q. Did you wife have an unrestricted right to draw on that bank account?

A. She did, yes.

Q. Did she exercise such right?

A. I believe so.

Q. You believe so? A. Yes, sir.

Q. You don't know whether she did or not?

A. Exercise——

Q. Did she exercise her right to draw on that account when she wanted to? A. Yes, sir.

Q. You state that she did? A. Yes, sir.

Q. Do you? A. Yes, sir.

Defendant's Exhibit No. 16—(Continued)
(Testimony of J. A. Kammerdiner.)

Q. Did your wife make any investments from that account, of her own accord? A. Yes, sir.

Q. Without consulting with you?

A. Of any great importance, in the jar business, it was consulted between us.

Q. I am talking about now, for any investments that she had, apart from the jar business?

A. She would make investments without consulting me, if she could.

Q. Did you? A. Yes, sir.

Q. But is it, or is it not, a fact, that afterwards each of you discussed what had been done?

A. Yes, sir.

Q. Employees were hired, persons were hired, in the business—did you consult with your wife with respect to it? A. Yes, sir.

Q. Did she pass upon such matters of employment and employees? A. Yes, sir.

Q. Did occasion ever arise when Mrs. Kammerdiner exercised her rights with respect to the funds in this bank account, and either determined what should be done or what should not be done?

A. Yes, sir.

Q. Did your wife pass upon, or did she not pass upon, all matters with respect to the rotary jar business, either as to the expansion of the trade, who should manufacture the articles, to whom they should be sold and so on?

A. Yes, she passed on all of it.

Q. Did she, or did she not, pass upon the credits

Defendant's Exhibit No. 16—(Continued)
(Testimony of J. A. Kammerdiner.)

of the persons who were going to purchase on time these jars? A. Yes, sir.

Q. Did you have both domestic as well as foreign business in these jars? A. Yes, sir.

Q. What was done with respect to the foreign business in the jars?

A. The California National had the exclusive foreign shipping.

Q. Did you devote yourself incident to the details of that foreign business? A. No, sir.

Q. I mean the collection of the accounts, and where they should go, and whether they were good accounts, or not, is what I mean?

A. Well, the California National—that is generally carried on by the National, and they were generally considered good; but for the rentals, I very seldom had a chance to pass on them.

Q. Who did?

A. My wife; but the National—that account was ten days cash.

Q. Did you and Mrs. Kammerdiner have occasion to employ anyone to assist you in the preparation of your income tax returns for any of the previous years 1925, 1926 or 1927, or prior years?

A. Yes, sir.

Q. Who did you employ or get to assist you in this matter?

A. A gentleman by the name of O'Hanlon at Fullerton—Dan O'Hanlon.

Q. What business was he in?

Defendant's Exhibit No. 16—(Continued)

(Testimony of J. A. Kammerdiner.)

A. Insurance and real estate business.

Q. And you had a controversy with the Government with respect to the acceptance of the partnership returns on behalf of you and your wife for the years 1925, 1926 and 1927? A. Yes, sir.

Q. What was the agreement which you entered into in April, 1923—was it reduced to writing in April, 1923? A. No, it wasn't.

Q. Have you ever reduced it to writing with respect to the partnership arrangement?

A. We have, in 1928, I believe—August, 1928.

Q. You did in 1928? A. Yes, sir.

Q. Why did you reduce it to writing then?

A. Well, they claimed——

Q. Who claimed?

A. Through our—through the gentleman that took out—that made out our report at Fullerton, gave us the impression that——

Mr. Clark: Now, your Honor, I do not think it makes any difference what impression was conveyed. This was reduced to writing in 1928 for some reason, and it had not been reduced to writing prior to that time. What I want to defeat is having any statement go into the record as a communication between the agents of the Government, the income tax bureau, and the petitioner, because these communications do not belong there.

Mr. Milliken: Well, if Mr. Clark will introduce with me the letters for the years 1925, 1926 and

Defendant's Exhibit No. 16—(Continued)
(Testimony of J. A. Kammerdiner.)
1927 which were sent to this man telling him that they would not recognize the partnership unless it was in writing, then I will get into 1928, and show they did recognize it then, because they put something in writing. That is all I want to do.

Q. You did, however, execute the agreement in 1928, that was in writing, with respect to the partnership? A. Yes.

Q. Did that change, in any wise, the manner in which you had conducted your business theretofore?

A. Not in the least.

Q. Did it change in any wise the division of the profits and the sharing of the losses between you and your wife, that you have testified about heretofore? A. No, sir.

The Member: Well, I take it that the situation is something like this: The taxpayer, as to this written agreement, partnership agreement, is contending that it was simply a reduction to writing of the oral agreement that was entered into in 1923, or whenever it was.

By Mr. Milliken:

Q. That was right, wasn't it, Mr. Kammerdiner?

A. Yes.

The Member: And I take it the Government's position is that, the very fact that the written agreement was entered into in 1928, is to be regarded as evidence or an indication anyway, that there was no partnership prior to that date.

The Member: It seems to me that the thing for

Defendant's Exhibit No. 16—(Continued)
(Testimony of J. A. Kammerdiner.)

you to do here—you have shown by this witness—this witness testified that he entered into an oral partnership agreement with his wife in 1923. Now, obviously, a partnership agreement, a written agreement, entered into in 1928, would not be material to the issue here, unless it be shown that it is merely a reduction to writing of an oral agreement that was entered into in 1923; and if you show that, it does not look to me like there is any difference what the reason for it was, who told you to do it, or anything of that kind.

Mr. Milliken: I did not want to get into a situation like this with Mr. or Mrs. Kammerdiner, or have your Honor get the impression that this husband and wife may have gone along and suddenly changed over, or something like that, and they are changing front about this matter, that is, their absolute good faith throughout.

The Member: What you are undertaking to do and what you must do to sustain your position, to prove that the partnership was effective by the oral agreement in 1923——

Mr. Milliken: The witness has so testified.

The Member: And that thereafter, they were in business, and in 1928, when the partnership agreement was effected, it was nothing more than a reduction to writing of the original oral agreement. That is what the Government disputes, I presume.

Mr. Milliken: Well, it is a reduction to writing of the partnership agreement in 1928.

Defendant's Exhibit No. 16—(Continued)
(Testimony of J. A. Kammerdiner.)
By Mr. Milliken:

Q. Was it a reduction to writing of the understanding or agreement that had theretofore existed since April, 1923?

A. That was our intention, yes.

Q. I believe you testified that it did not change your manner of operations or anything one iota?

A. No, sir.

Cross Examination

By Mr. Clark:

Q. The manufacture of this patented article was begun in April, 1923, do I understand, Mr. Kammerdiner? A. Yes.

Q. Prior to that time had you manufactured any article of this sort? A. No, sir.

Q. Or this general character? A. No, sir.

Q. When was this patent obtained? I believe you stated you operated—you applied for it in January, 1922?

A. No, sir, October 22, 1922, I believe.

Q. Have you that letter of patent, or those letters patent, I am not just sure which is the proper way to refer to them.

A. I have those, but not with me.

Q. To whom was the patent issued?

A. James Allen Kammerdiner.

Q. That is your name? A. Yes, sir.

Q. Where was it that you kept the bank account which you have referred to, the bank account

Defendant's Exhibit No. 16—(Continued)
(Testimony of J. A. Kammerdiner.)
through which the operations of this manufacturing business were conducted?

A. We always had a bank account, a small bank account.

Q. I was asking you where it was kept, I mean in what bank?

A. The Citizens and the Security. We have two banks, and the Farmers and Merchants, at Fullerton, three banks.

Q. In whose name was the account?

A. James Kammerdiner and Myrtle B. Kammerdiner,—or set out as James Kammerdiner or Mrs. Kammerdiner. I believe it is on the book that way.

Q. Either or both of you drew checks on the account? A. Yes, sir.

Q. I believe you have stated there was no restriction on Mrs. Kammerdiner's drawing?

A. No, sir.

Q. Did you draw without restriction also?

A. Yes, sir.

Q. Now, Mrs. Kammerdiner, as I understand it, looked after all of the details of this manufacturing business?

A. As far as the office work would be concerned, she did.

Q. Well, now, what would be the division between the office work, so-called, and your work, which I believe you referred to as outside work?

A. Well, the outside work—I would be gone

Defendant's Exhibit No. 16—(Continued)
(Testimony of J. A. Kammerdiner.)
sometimes for two or three or four days, never get home——

Q. Do I understand that you manufactured this equipment for this oil drilling, and did you attend to the installations?

A. Yes, the rental business—these are not sold; they are all rentals.

Q. You retain title and rent them?

A. Yes, sir.

Q. Do you have patents in other countries?

A. Yes, sir.

Q. In whose name do those patents stand?

A. The same, James Allen Kammerdiner.

Q. In what country do you have patents?

A. Great Britain and the Irish Free State, I believe are the only foreign countries.

Q. How long have you had those patents?

A. Ever since they were allowed in the United States, ever since they were patented in the United States.

Q. And those tools, do I understand, are sold by you in countries other than the United States?

A. Yes, sir.

Q. You made some reference to employees; how many employees did you have during the years that are involved in this petition? A. Two.

Q. Did I understand you to state that Mrs. Kammerdiner passed on the credit of those who obtained the use of these tools from you?

Defendant's Exhibit No. 16—(Continued)
(Testimony of J. A. Kammerdiner.)

A. If it was pressing, she did it. I was not familiar with it.

Q. You made no investigation relative to the financial

Q. Were there any losses during these years? When I say were there any losses I mean—I will try to make myself clear. You have stated there was an agreement between you two that you would share the profits, and there was an agreement that you would share the losses also; were there any losses?

A. I don't believe there was any losses. And if there were, they were of no great amount, and our return showed a profit.

Q. Did Mrs. Kammerdiner place any capital in the enterprise, at the time, did she furnish any money?

A. I don't believe that she furnished any money, although she did have an account, a savings account, even before I made application for the patent.

Q. She had a savings account for sometime, didn't she? A. Yes, sir.

Q. Before that? A. Yes, sir.

Q. But did she withdraw any funds that were employed in the manufacture and exploitation and use of these tools?

A. I wouldn't say that she did, no, sir.

Q. Where did you obtain the funds that were necessary for manufacturing?

A. The checking account. I gave a check for——

Defendant's Exhibit No. 16—(Continued)
(Testimony of J. A. Kammerdiner.)

Q. Where did you get the funds in the first instance when you first started?

A. They were derived from working for the Union Oil Company and the Standard and the Associated. We always saved a little along the line. I wouldn't say which account it came from, or which company it came from.

Q. But it was money which you had acquired, wasn't it, through your activities?

A. Had been acquired——

Q. I am speaking now of the time up until April, 1923. A. How?

Q. I am speaking of the time prior to April, 1923, she had earned some money up to that time?

A. Yes.

Q. Perhaps I am confused. I thought you just stated that you couldn't say that she had ever put any money into the project of manufacturing these tools. A. She had.

Q. Then you want to change your testimony?

A. I stated before that she had made some money, I didn't know how much.

Q. Yes, I recall that.

A. There had been a profit in it, and getting down to the little minor points of it, she even got some pigs and raised pigs and got some money.

Q. I appreciate that she had earned some money and that she had this savings account and saved some money.

Defendant's Exhibit No. 16—(Continued)
(Testimony of J. A. Kammerdiner.)

A. That all came into—right into the funds of both of us.

Q. What I would like to get at is this: You started in April, 1923, and what did you acquire; what was it necessary for you to have by way of working capital in order to start this manufacturing of this patented product?

A. Just a few hundred dollars.

Q. What were the expenses that you had to meet in connection with it; that is, how were these few hundred dollars—for what were they expended?

A. From the checking account.

Q. I understand they were taken from the checking account, or you say so now, but what were they necessary for?

A. For making a set of jars, the machine shop.

Q. And those jars you did not yourself manufacture, but you hired them manufactured at some other place? A. Yes, sir.

Q. What did you have to pay for the manufacture of those jars, just roughly?

A. In the neighborhood of $500.

Q. For each one? A. Yes, sir.

Q. How many orders did you have when you started out?

A. One order for one set of jars.

Q. A $500 order?

A. No, that is all rental. This is rental in the United States. There is none of them sold; there has not been one sold.

Defendant's Exhibit No. 16—(Continued)
(Testimony of J. A. Kammerdiner.)

Q. But it cost you to have them manufactured?

A. Yes, sir.

Q. Now, what did it cost you to manufacture your first set of jars that you started with?

A. About $500.

Q. $4500? A. No, $500.

Q. $500? A. Yes, sir.

Q. And that money was taken from what source? A. The checking account.

Q. And that checking account was the one which had existed for some time previous, was it?

A. Yes, sir.

Q. Did you have printed or engraved letterheads? A. Yes, sir.

Q. For your business? A. Yes, sir.

Q. What was the caption on the letterheads?

A. J. A. Kammerdiner.

Q. Was your wife's name there at all?

A. No, sir.

Q. Did you ever borrow any money in the course of the business, at banks? A. No, sir.

Q. Is it or is it not a fact that all the contracts entered into in these years, which were contracts you have just spoken of,—were they not in your own name? A. Yes, sir.

Mr. Milliken: We admit that all the contracts of that nature were in the name of James Kammerdiner only.

By Mr. Clark:

Q. What other contracts were there—of what na-

Defendant's Exhibit No. 16—(Continued)

(Testimony of J. A. Kammerdiner.)

ture were they—what kind of contracts were there, if any?

A. There were other agreements or contracts in line with the tool company's, for taking this and putting it out on rental.

Q. And those contracts were signed in your name?

A. Yes; but in the first place——

Q. Well, now, your attorney will take care of your explanation. I just wanted to know whether they were so signed? A. Yes, sir.

Redirect Examination

By Mr. Milliken:

Q. I believe you have testified, Mr. Kammerdiner, that the patent was taken out in the United States Patent Office, or letters patent, whatever they may be called, were they taken out in your name? A. Yes, sir.

By Mr. Milliken:

Q. Why did you operate under the name of J. Kammerdiner; was there any reason for it?

A. Well, I was very well known in this community and I imagine that——

Q. Well, now, leave out what you imagined. You cannot testify as to what you imagine.

A. Well, I was very well known in this country and all of the leading companies, and a good many of the smaller ones, I had been in contact with in one way or the other, and they knew that I had a

Defendant's Exhibit No. 16—(Continued)
(Testimony of J. A. Kammerdiner.)

good bit of experience in drilling oil wells, and I figured that my name would have some prestige in bringing in the business.

Q. Well, did you feel, or did you decide, that there was—it would be more advantageous to you, from a business standpoint, to operate under your name? A. Yes, sir.

Q. Or the name of you and your wife?

A. Under my name.

Q. Was that the reason you operated under your name? A. Yes, sir.

Q. Did you ever pay your wife any salary?

A. No, sir.

Q. During any of the years since 1923?

A. No, sir, I did not.

By Mr. Milliken:

Q. Did or did not your wife, during these years, give orders and enter into agreements with respect to the manufacture of this article, and what they were to cost and who was to be paid?

A. Yes, sir.

Q. Now, you testified that, in April, 1923, you entered into this partnership agreement; did it relate to all the rights which you then had, or all the rights which you might acquire thereafter in the patent, or to the patent, or to the rights which you then had?

The Member: Of course, I am of the impression the witness already testified to the terms of this oral contract a time or two.

Defendant's Exhibit No. 16—(Continued)

(Testimony of J. A. Kammerdiner.)

Mr. Milliken: I will state my purpose after the witness has answered.

The Witness: All the rights.

Mr. Milliken: That is all.

Recross Examination

By Mr. Clark:

Q. Just what was—what were the terms of this agreement, Mr. Kammerdiner? Let me preface that question:

Was there a time when you and Mrs. Kammerdiner sat down together and agreed on the terms of the contract? A. Yes, sir.

Q. Between yourselves? A. Yes, sir.

Q. When was that?

A. That was in April, 1923.

Q. You have spoken, on redirect examination, of the agreement into which Mrs. Kammerdiner entered for materials and supplies for the manufacture of these tools, I am not just sure just what, but you recall that you did answer to that effect?

A. Yes, sir.

Q. Were those written agreements into which Mrs. Kammerdiner entered?

A. Some of them were.

Q. And whose names were signed to the agreements? A. Her name.

Q. Did she sign your name at any time?

A. She signed her name—signed my name with her name or initials after it, each time.

Defendant's Exhibit No. 16—(Continued)

MRS. MYRTLE B. KAMMERDINER

was called as a witness by and on behalf of the petitioner, and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Milliken:

Q. You are the wife of James Kammerdiner?

A. Yes, sir.

Q. Did Mr. Kammerdiner state the correct date of your marriage? A. Yes, sir.

Q. In what business were you engaged prior to your marriage, if any?

A. I was a stenographer, in general office work.

Q. After you married Mr. Kammerdiner, what were your duties; those of a housewife?

A. Yes, sir.

Q. He has testified that—you heard him testify that, when he went on some of these jobs, you also ran boarding houses and so on, for him, as part of his employment, the duties of his employment? A. I did.

Q. Did you save any money out of that?

A. I did.

Q. How much was it?

A. Well, I don't know exactly. It was quite a little sum, several thousand dollars.

Q. What did you do with it?

A. I deposited it in the bank.

Q. To your own account?

A. No, it was deposited jointly.

Q. Did you have a savings account out of it?

Defendant's Exhibit No. 16—(Continued)
(Testimony of Mrs. Myrtle B. Kammerdiner.)

A. Yes, sir.

Q. Was that in your name, or his name?

A. It was to start with, and it was later transferred to both of our names.

Q. When did you transfer it over, do you know?

A. No, I don't know exactly. It was transferred over, though, sometime before we went into the business; I know that.

Q. I see.

A. Originally it was just Myrtle B. Kammerdiner.

Q. It was originally in your name, and you transferred it over to the joint account of each?

A. Yes, sir.

Q. Did the funds which you had and the funds which Mr. Kammerdiner had, comprise your joint account in 1923? A. Yes, sir.

Q. Was it subject to check for any expenses which might have been necessary incident to the rotary jar business? A. Yes, sir.

Q. In the beginning? A. Yes, sir.

Q. What part, if any, did you play, in your consultations with Mr. Kammerdiner, with respect to the procuring of the patent, the rotary jar patent?

A. Well, of course, it was his idea, and a question came up about the patent that he was rather slow about applying, and I thought it should be attended to, because I felt it was something that was important, and in that way I got—I consulted some

Defendant's Exhibit No. 16—(Continued)
(Testimony of Mrs. Myrtle B. Kammerdiner.)
attorneys that we were acquainted with, and it was through them that they recommended this patent attorney for him to go to. He was quite reluctant about attending to it, because he was employed there by one of the big companies and he felt that he didn't have the time to attend to it.

Q. Did you and Mr. Kammerdiner enter into any agreement with respect to the manufacture of these patented articles?

A. I don't just get that.

Q. Did you enter into any agreement with respect to what rights, if any, you had, or what rights, if any, he had, or at any time did you discuss the matter of how you would conduct the business? A. Yes, sir.

Q. When did you do that?

A. Well, that was right—when we started out, it was along in the spring, in April.

Q. What year? A. 1923.

Q. What understanding or agreement did you reach?

A. Well, he said he would conduct the field work, the running of these jars, and I would take care of the collections and receive the telephone orders as they came in, and do the billing, and do the collecting.

Q. And did you do so? A. I did.

Q. What was the agreement, if any, that was reached with respect to the share in the gains or share in the losses?

Defendant's Exhibit No. 16—(Continued)
(Testimony of Mrs. Myrtle B. Kammerdiner.)

A. Well, we were to take a share alike, fifty-fifty the losses or the gains.

Q. And that was the agreement, the one you entered into? A. Yes, sir.

Q. What duties did you perform, if any, in the rotary jar business, during the years 1925, 1926 and 1927?

A. Well, I attended to the billing and the checking of any bills that came in against us, that were to be paid out, made out the checks and signed some of the checks, and some Mr. Kammerdiner signed after I made them out. I O. K.'ed the bills, and then did most of the ordering of the jars, the bills that were made from the shop, and what collecting—I did the collecting.

Q. Did you pass upon the credit of the individual—— A. Yes, sir.

Q. With whom you were going to do business?

A. Yes, sir.

Q. Did you pass upon, or did you not pass upon the fact of whom you were going to get to manufacture these articles?

A. Yes, sir, that was talked over.

Q. And at what price they would be manufactured? A. Yes, sir.

Q. Did you pass upon the disputed items, if there were any? A. Yes, sir.

Q. Were there any?

A. Oh, yes, there were a number of times that they came up—you see, our repair work—we could

Defendant's Exhibit No. 16—(Continued)
(Testimony of Mrs. Myrtle B. Kammerdiner.)
not have a stipulated price—and that was just done, and if there were any mistakes in those, those bills were checked——

Q. The moneys that you collected, what did you do with them?

A. I deposited them in the joint account.

Q. The joint account of whom?

A. Mr. or Mrs. J. Kammerdiner.

Q. Did you have a right in 1925 and 1926 and 1927 to draw on that account into which you deposited these moneys? A. Yes, sir.

Q. Did you do so? A. Yes, sir.

Q. Did you make investments of your own out of that account? A. Yes, sir.

Q. Did Mr. Kammerdiner discuss with you any important matters with respect to the operation of the business?

A. Yes, sir, we always went into consultation on them.

Q. Did he make any changes, or change the scope of the business in any way, without discussing it with you, or did he go ahead and do it of his own volition?

A. No, it was always talked over.

Q. Talked over? A. Yes, sir.

Q. With you? A. Yes, sir.

Q. Did you and Mr. Kammerdiner ever discuss the question of the desirability of operating under the name of James Kammerdiner?

A. Yes, sir.

Defendant's Exhibit No. 16—(Continued)

(Testimony of Mrs. Myrtle B. Kammerdiner.)

Q. What discussion did each of you have, or did you have, at least?

A. We thought, that inasmuch as he was so well acquainted all through the field, it was the thing to use, just James Kammerdiner?

Q. Did you do any advertising in these years?

A. Yes, sir.

Q. Who prepared the advertising?

A. Well, it was gotten up through—between the magazine representatives and myself.

Q. Who placed the order for the advertising?

A. I did.

Q. Who paid for the advertising?

A. Well, I think I did, personally. I wrote the checks.

Q. Were there books kept of the business during the years 1925, 1926 and 1927?

A. Well, it was just a single entry; we didn't keep a double entry.

Q. Who kept those books? A. I did.

Q. I show you three books that are labeled on the outside "1925," "1926," and "1927"; were those the books that you kept? A. Yes, sir.

Q. Will you please explain—are they all in the handwriting of yourself? A. Yes, sir.

Q. All of the handwriting in the books yours?

A. Yes, sir.

Q. Will you explain to the court the manner in which these books were kept? Are they all kept alike, so that the explanation for one year would

Defendant's Exhibit No. 16—(Continued)
(Testimony of Mrs. Myrtle B. Kammerdiner.)
suffice for all three years? A. Yes.

Q. Did your books, for any of the years, record what might be termed as capital account of either you or Mr. Kammerdiner? Do you understand what I mean by capital account? I mean, setting up an account showing what James Kammerdiner is entitled to, and what you are entitled to.

A. No.

Q. Were there, or were there not, any capital accounts set up on your books for 1925, 1926 and 1927, with respect to James Kammerdiner and for yourself? A. No, sir.

Q. Why were no capital accounts set up?

A. Well, we didn't feel it was necessary. There was nobody involved but just he and I, and we trusted one another enough that we didn't feel it was necessary.

By Mr. Milliken:

Q. Have you any other records, exclusive of those books, which will reflect the earnings of the business? What did you do with the money that you earned from the business?

A. It was all deposited to the joint account.

The Member: Do you want it to stand that way, deposited in the bank, as reflecting the earnings of the business?

By Mr. Milliken:

Q. In other words, the earnings—any collections that you made for the business, what did you do with them? A. Deposited them.

Defendant's Exhibit No. 16—(Continued)
(Testimony of Mrs. Myrtle B. Kammerdiner.)

Q. And any bills that you paid, that were the bills of the business, what did you do with them?

A. Well, we paid them out of it.

Q. Paid them out of what—the account?

A. Yes, sir.

Q. You have testified that these books record the amount of the cash collections in each year; is that true? A. Yes, sir.

Q. And they record the payments each year?

A. Yes, sir.

Q. Did you receive any salary from the business during any of these years?

A. No, sir.

Q. What were your hours of employment?

A. Well, I don't know; just as soon as I got through.

By The Member:

Q. How many hours a day did you work at this business?

A. I worked at it every day except Sunday.

By Mr. Milliken:

Q. Did you work at night?

A. Well, no.

Q. Did you ever have any business transactions at night?

A. Oh, there have been telephone calls, and of course I would receive them.

Q. Did you devote your entire time and attention to this business during the years 1925, 1926 and 1927? A. Practically.

Defendant's Exhibit No. 16—(Continued)
(Testimony of Mrs. Myrtle B. Kammerdiner.)

Q. What else did you do, if that wasn't all?

A. Well, that is about all.

Mr. Milliken: That is all, Mr. Clark.

Cross Examination

By Mr. Clark:

Q. The offices in which you conducted this employment were in your home, I believe?

A. Yes, sir.

Q. Did you conduct the home yourself?

A. Well, I had help.

Q. How much domestic help did you employ?

A. I had one servant, and I had extra help that came in.

Q. How much extra help during the years that are involved here?

A. Well, it would be one or two days a week, I had a laundress and had a woman that came in to do the cleaning.

Q. Then you had one servant who was there——

A. All of the time.

Q. During that period? A. Yes, sir.

Q. How much did you pay this domestic help?

A. I paid her $80 a month, and of course the other work was done by the hour, you know.

Q. When did she come with you first?

A. In January, I think. I don't know now. I know it was along the first of the year, but I don't know what day it was.

Q. The first of the year when?

Defendant's Exhibit No. 16—(Continued)
(Testimony of Mrs. Myrtle B. Kammerdiner.)

A. That is what I don't know, what year it was. It was right after we started, I know, but I don't know just——

Q. Did your household consist entirely of Mr. Kammerdiner and yourself?

A. No, we have two daughters.

Q. How old were they at this time?

A. One is about 18 and one is 15.

Q. Is that their present ages?

A. Yes, sir.

Q. Any other members of your family?

A. No.

Q. Did you give attention to them, and their upbringing, the supervision of their activities and affairs, personally, during these years, or was that looked after by one of the domestic help?

A. Well, yes, of course I gave them advice and all that, but they were looked after by the help.

Q. Did you perform what you would consider the ordinary duties and functions of a mother of two daughters of the ages that they were, during these years in question?

A. Yes, naturally, I looked after them.

Q. You stated that you signed checks; did you sign your own name or did you sign Mr. Kammerdiner's name?

A. I signed my own name, Mrs. J. Kammerdiner.

Q. That was on this account, on which you both had the right to draw? A. Yes.

Defendant's Exhibit No. 16—(Continued)
(Testimony of Mrs. Myrtle B. Kammerdiner.)

Mr. Clark: That is all.

Mr. Milliken: That is all.

The Member: That is all, Mrs. Kammerdiner.

Mr. Milliken: I want to ask you another question, Mrs. Kammerdiner.

Redirect Examination

By Mr. Milliken:

Q. Mrs. Kammerdiner, was this contract or agreement that you and Mr. Kammerdiner entered into in April, 1923—was it reduced to writing?

A. Yes, sir.

Q. When was it reduced to writing?

A. In 1928.

Q. Was the contract which was reduced to writing in 1928—did it set forth any new understanding or agreement reached between you?

A. No, it was merely to verify our—to verify our verbal——

Q. It was merely to reduce to writing what had theretofore been agreed upon?

A. Yes, sir.

Q. And observed during these years, was it?

A. Yes, sir.

Mr. Milliken: That is all.

Mr. Clark: That is all.

(Witness excused.)

[Endorsed]: Filed Dec. 29, 1941.

Mr. Mitchell: The defendants rest.

The Court: Any rebuttal?

Mr. Smith: The plaintiffs rest .[156]

Mr. Mitchell: Excuse me, your Honor. I think it was the intention of all the parties, as well as the judge, that Defendant 13, a list of patents prepared by Mr. Mann, would go out and be stricken.

Mr. Smith: Yes.

The Court: We will mark it withdrawn then because errors were discovered in it.

[Endorsed]: Filed Jan. 8, 1942. [157]

[Endorsed]: No. 10351. United States Circuit Court of Appeals for the Ninth Circuit. Nat Rogan, Collector of Internal Revenue for the Sixth District of California, Appellant, vs. James A. Kammerdiner, individually and as Surviving Joint Tenant of Myrtle B. Kammerdiner, deceased, Appellee. Transcript of Record upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed: January 18, 1943.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10351

NAT ROGAN, Collector of Internal Revenue,
Appellant

vs.

JAMES A. KAMMERDINER, individually and as surviving joint tenant of Myrtle B. Kammerdiner, Deceased,
Appellee

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY

The issues involved in this case are:

(1st) Whether more than one-half of the 1935 assets of the joint tenancy Rotary Jar business of Mr. and Mrs. Kammerdiner "originally belonged" to the surviving husband, within the meaning of Section 302(c) of the Revenue Act of 1926, as amended; and

(2d) If so, whether Mrs. Kammerdiner, the decedent, paid for her joint tenancy one-half interest any "adequate or full consideration in money or money's worth", within the meaning of the same section of the state tax statute and of Articles 22, 23 and 23(b) of Regulations 80 (1934 ed)?

Appellant's Contentions.

Appellant contends, alternatively, (1st) that the decedent's half never originally belonged to

her husband, but (2d) that, if it did, she acquired it from her husband for a valuable consideration in money or money's worth.

Points Relied Upon by Appellant.

In support of above contentions, appellant will here urge the following points, to wit:

I.

The trial court erred in concluding that plaintiff-appellee sustained his burden of establishing that none of the decedent's half of the assets and income of the joint tenancy Rotary Jar business originally belonged to her.

II.

The trial court erred in concluding that plaintiff sustained his burden of establishing that decedent did not acquire her half of the assets and income of such joint tenancy business for an adequate or full consideration in money or money's worth.

III.

There is no substantial or other evidence to support the trial court's finding that all or any of the decedent's half of the assets and income of the joint tenancy business originally belonged to her surviving husband.

IV.

There is no evidence, substantial or otherwise, to support the trial court's finding that no part of decedent's half of the assets and income of the joint tenancy business was acquired by her for an ade-

quate or full consideration in money or money's worth.

V.

There is no evidence, substantial or otherwise, to support the trial court's findings and conclusions (a) to the effect that decedent and her husband never entered into a co-ownership agreement in respect of the assets and income of said Rotary Jar business prior to their written joint tenancy agreement of 1928; or (b) to the effect that decedent and her husband never entered into either a co-partnership or a joint adventure agreement in respect of said enterprise prior to their written joint tenancy agreement of 1928.

VI.

The trial court erred in deciding and concluding that the plaintiff, by clear and convincing evidence, traced 100% of each 1935 asset of said joint tenancy business back to California community property of the type acquired before July 29, 1927.

VII.

The trial court erred in deciding and concluding that, by clear and convincing evidence, the plaintiff established that he made a gift to decedent of her half of the assets and income of the joint tenancy business.

VIII.

The trial court erred in deciding and concluding that, by clear and convincing evidence, the plaintiff

established that decedent never invested any funds of her own in the promotion or conduct of such Rotary Jar enterprise, and never, pursuant to an agreement or understanding, contributed any extra-marital personal services in the initial promotion thereof; and there is no substantial or other evidence to support the trial court's implied finding to that effect.

IX.

The trial court erred in deciding and concluding that, by clear and convincing evidence, the plaintiff established that decedent never agreed to contribute her extra-marital personal services to the conduct of said Rotary Jar enterprise in consideration of plaintiff's promise that she should own an undivided one-half of the property and income of such business; and there is no substantial or other evidence to support the court's finding to that effect.

X.

The trial court erred in deciding and concluding that, by clear and convincing evidence, the plaintiff established that the decedent did not contribute twelve years of her extra-marital personal services, or any services, to the conduct of such business pursuant to and in reliance upon plaintiff's said promise; and there is no evidence, substantial or otherwise, to support the court's implied finding to that effect.

XI.

The trial court erred in deciding and impliedly

concluding that, by clear and convincing evidence, the plaintiff established that the twelve years of extra-marital personal services contributed by decedent to said business were gratuitous, and that the value thereof constituted a gift by her to plaintiff or to the marital community; and the court's implied finding and conclusion to that effect is not supported by the evidence.

XII.

The trial court erred in deciding and impliedly concluding that, by clear and convincing evidence, the plaintiff established that the decedent's contribution of twelve years of personal services to said enterprise was valueless; and the court's implied finding to that effect is not supported by the evidence.

XIII.

The trial court erred in deciding and impliedly concluding that, by clear and convincing evidence, the plaintiff established that the decedent's joint tenancy half interest in the assets and income of said enterprise was not acquired by her as the compensation of an employee for personal services rendered by her; and the court's implied finding to that effect is not supported by the evidence.

XIV.

The trial court erred in deciding and impliedly concluding that, by clear and convincing evidence, the plaintiff established that no part of the value

of the 1935 assets of the Rotary Jar business was attributable to the personal services of the spouses exerted after July 29, 1927; and the court's implied finding to that effect is not supported by the evidence.

XV.

The trial court erred in deciding and impliedly concluding that, by clear and convincing evidence, the plaintiff established that no part of the 1935 value of the assets of said enterprise was attributable to the protective patents purchased with co-owned funds of the spouses; and the court's implied finding to that effect is not supported by the evidence.

XVI.

There is no evidence to support the trial court's finding that all rights under the original patent were not owned by the Rotary Jar enterprise, or to support the finding that such rights were never assets of such enterprise.

XVII.

The trial court erred in denying the defendant's Motion for New Trial and to Amend and Add Findings and Conclusions.

XVIII.

The plaintiff-appellee is barred in this action from proving or attempting to prove the falsity of the facts decided and adjudicated in his favor by the Board of Tax Appeals in the cases of J. Kammerdiner v. Comm'r., 25 B.T.A. 495 (1932), Acq.

XI-2 C. B. 5; and the trial court erred in denying appellant's plea of res adjudicata.

Dated: January 16, 1943.

LEO V. SILVERSTEIN,
United States Attorney.
E. H. MITCHELL,
Assistant United States Attorney.
By E. H. MITCHELL,
Attorneys for Appellant.

[Endorsed]: Filed Jan. 18, 1943. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF PARTS OF RECORD DEEMED NECESSARY FOR CONSIDERATION ON APPEAL

Pursuant to Rule 19-6 of this Court, appellant designates the parts of the Record which he thinks necessary for the consideration of the points listed in his Statement of Points on which he intends to rely, filed concurrently herewith, and the parts which he desires to have printed, to wit:

Documents

	Pages of Certified Record
1. Names and addresses of attorneys	1
2. Complaint, including exhibits attached ...	2

3. Answer 42
4. Minute Order of February 28, 1942 48
5. Findings and Conclusions, dated July 15, 1942 50
6. Judgment, dated July 15, 1942 61
7. Defendant's Motion for New Trial and to Amend and Add Findings and Conclusions, dated and filed July 22, 1942..... 63
8. Notice of hearing said Motion (No. 7, above), dated and filed July 22, 1942 ... 74
9. Minute Order, dated and entered August 5, 1942, denying said Motion (No. 7, above) 76
10. Defendant's Notice of Appeal, dated and filed October 20, 1942 77
11. Order extending time to docket cause on appeal, dated and filed November 25, 1942 78
12. Order extending time to January 18, 1943, to docket cause on appeal, dated and filed January 12, 1943 79
13. Defendant's Designation of Contents of Record on Appeal, dated and filed January 12, 1943 82
14. Stipulation and Order Re Record on Appeal, dated and filed January 13, 1943 .. 80

Note: Omit from the foregoing items, 1 through 14, all titles of court and cause, all signatures and verifications, and all endorsements, but print all order dates, all service

and mailing dates, and all filing and entry dates.

15. The following portions of the Reporter's Transcript of Proceedings of December 29, 1941, to wit:

Title of court and cause and date of proceedings
Page 7, line 2 to p. 10, line 9, inclusive
Page 10, line 22 to p. 11, line 9, inclusive
Page 12, lines 12 to 19, inclusive
Page 13, line 6 to p. 15, line 4, inclusive
Page 15, lines 12 to 18, inclusive
Page 16, lines 8 and 9
Page 16, line 15, to p. 30, line 16, inclusive
Page 31, line 7 to p. 34, line 24, inclusive
Page 36, line 17, to p. 42, line 17, inclusive
Page 42, line 25 to p. 47-48, line 8, inclusive
Page 49, lines 2 to 5, inclusive
Page 49, line 21 to p. 58, line 2, inclusive
Page 58, line 19 to p. 59, line 19, inclusive
Page 60, lines 8 to 15, inclusive
Page 60, line 20 to p. 62, line 20, inclusive
Page 63, line 10 to p. 65, line 13, inclusive
Page 66, lines 1 and 2
Page 67, line 12 to p. 75, line 14, inclusive
Page 77, line 24 to p. 79, line 21, inclusive
Page 82, line 20 to p. 83, line 11, inclusive
Page 83, line 19 to p. 87, line 15, inclusive
Page 87, line 24 to p. 89, line 25, inclusive
Page 93, line 10 to p. 97, line 26, inclusive
Page 98, line 11 to p. 100, line 13, inclusive

Page 100, line 23 to p. 101, line 4, inclusive
Page 104, line 18 to p. 105, line 7, inclusive
Page 106, line 15 to p. 108, line 21, inclusive
Page 109, line 8 to p. 110, line 14, inclusive
Page 111, line 4 to p. 113, line 25, inclusive
Page 115, line 25 to p. 16, line 6, inclusive
Page 118, line 1
Page 118, line 13 to p. 119, line 18, inclusive
Page 119, line 25 to p. 20, line 11, inclusive
Page 120, line 7 to p. 122, line 3, inclusive
Page 122, lines 13 to 18, inclusive
Page 122, lines 23 to 27, inclusive
Page 123, lines 2 to 21, inclusive
Page 124, lines 1 to 20, inclusive
Page 125, lines 2 to 6, inclusive
Page 125, lines 14 to 22, inclusive
Page 126, line 10 to p. 131, line 8, inclusive
Page 133, line 16 to p. 143, line 26, inclusive
Page 144, line 7 to p. 146, line 9, inclusive
Page 146, line 19 to p. 147, line 1, inclusive
Page 147, line 16 to p. 148, line 22, inclusive
Page 148, line 26 to p. 149, line 5, inclusive
Page 149, lines 14 to 24, inclusive
Page 150, lines 9 to 11, inclusive
Page 150, line 24 to p. 151, line 2, inclusive
Page 154, line 8 to p. 155, line 22, inclusive
Page 156, lines 14 to 16, inclusive
Page 157, lines 11-17, inclusive

Defendant's Exhibits

16. Defendant's Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 (all bank books).

Note. Print or photostat only the pages of these bank books upon which appear the account numbers, depositors' names, the dates and amounts of deposits and withdrawals and the exhibit numbers.

17. Defendant's Exhibit 12, Estate Tax Return.

Note. Print or photostat the following pages, only, to wit:

Page A-3;

Pages A-8 to A-20, inclusive, containing Schedule "D-1";

Page A-21, containing Schedule "D-2";

Page A-27, containing Schedule "H";

Page A-31, containing Schedules "L" and "M";

Page A-32, containing Schedules "N" and "O"—if printed, print only Schedule "N";

Page A-34, containing "Computation of Tax" —if printed, print only the computation; and

Page A-35—if printed, print only the "Jurat for Beneficiaries, Cutodians, and Trustees", through the signature of the notary.

18. Defendant's Exhibit marked 14-a but introduced as "14", a certificate of "Partnership Name".

Note. Omit affidavit of publication—but indicate it—and omit County Clerk's certificate attached.

19. Defendant's Exhibit marked 14-b but erroneously introduced as "14", an authenticated

copy of Petition to Board of Tax Appeals with Exhibits attached and answer thereto.

Note. Omit the 2 certificates of the Board's Clerk and the certificate of the Board Chairman.

20. Defendant's Exhibit 15, another authenticated copy of petition to Board of Tax Appeals with Exhibits attached, and answer thereto.

Note. Omit the 2 certificates of Board Clerk and the certificate of the Board Chairman.

21. Defendant's Exhibit 16, an authenticated copy of Official Report of Proceedings before the Board of Tax Appeals in Los Angeles on June 10, 1931.

Note. Print or photostat the following portions, only, to wit:

All of pages E-1, E-5 and E-6
The first 4 and the last 5 lines of page E-7
The first 7 lines of page E-8
The last 18 lines of page E-10
The first 8 lines of page E-11
The last 12 lines of page E-13
All of pages E-14 and E-15
The last 13 lines of page E-17
The first 6 and the last 6 lines of page E-18
All of pages E-19 through E-23
The first 14 and the last 4 lines of page E-24
All of page E-25
The first 7 lines of page E-26
The last 2 lines of page E-27

The first 8 lines of page E-28
The last 8 lines of page E-29
The last 17 lines of page E-30
The first 17 lines of page E-31

Cross-Examination

The 3d and 4th lines of page E-32
Lines 19, 20, 21, 24 and 25 of page E-33
The first 7 lines of page E-34
The last 6 lines of page E-36
The last 7 lines of page E-38
All of page E-39
The first 3 lines and lines 20, 21, 22, 23 and 24 of page E-40
Lines 7, 8 and 9 of page E-41

Redirect Examination

Last 7 lines of page E-44
The first 18 lines of page E-45
The first 10 lines of page E-46
All but the first line of page E-47
The first 9 lines of page E-48
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Last 11 lines of page E-53
All of pages E-54, E-55, E-56, E-57, E-58 and E-59
All but the last 5 lines of page E-60
Lines 3 to 10, inclusive, of page E-64
All of pages E-66, E-67, E-68 and E-69

22. Defendant's Exhibit 17

Note. Omit sealed certificate of Chief Clerk, Treasury Department.

23. Defendant's Exhibit 18
24. Defendant's Exhibits 19 to 36, inclusive, together with attached computations

 Note. Omit all sealed certificates of the Chief Clerk, Treasury Department

 Omit printed pages 2 of Defendant's Exhibits 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36

Plaintiff's Exhibits

25. Plaintiff's Exhibit 9
26. Plaintiff's Exhibit 11

 Note. Print or photostat typed pages 1 and 2 only

27. Plaintiff's Exhibit 12

 Note. Print or photostat typed page 1, only
28. All of Plaintiff's Exhibit 13
29. Plaintiff's Exhibit 14

 Note. Print or photostat typed pages 1 and 2, only

30. Plaintiff's Exhibit 15

 Note. Print or photostat typed page 1, only
31. Statement of Points on which appellant intends to rely, captioned the Circuit Court of Appeals and filed concurrently with this Designation

 Note. Omit Title of court, cause and signatures.
32. This Designation

 Note. Omit title of court, cause and signatures.

Dated: January 16, 1943.

LEO V. SILVERSTEIN,
United States Attorney.
E. H. MITCHELL,
Assistant United States Attorney.
By E. H. MITCHELL,
Attorneys for Appellant.

[Title of Circuit Court of Appeals and Cause.]

APPELLEE'S DESIGNATION OF ADDITIONAL PARTS OF RECORD MATERIAL FOR CONSIDERATION ON APPEAL.

Pursuant to Rule 19-6 of this Court, appellee designates the parts of the record which he thinks material for the consideration of the points listed by the appellant herein in his statement of points, and the parts which he desires to have printed, to wit:

1. The following portions of the Reporter's Transcript of Proceedings of December 29, 1941, to wit:

Page 30, line 17, to page 31, line 6, both inclusive;

Page 34, line 25, to page 36, line 13, both inclusive;

Page 48, line 9, to page 49, line 1, both inclusive;

Page 49, lines 6 to 20, both inclusive;

Page 75, lines 15 to 20, both inclusive;

Page 75, lines 25 and 26;

Page 76, lines 13 to 26, both inclusive;

Page 77, lines 9 to 23, both inclusive;

Page 79, line 22, to page 80, line 23, both inclusive;

Page 81, line 8 to page 82, line 16, both inclusive;

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Page 120, lines 12 to 16, both inclusive;

Page 122, line 4;

Page 122, lines 11 and 12;

Page 122, lines 19 to 22, both inclusive;

Page 123, lines 22, 23, and 26;

Page 133, lines 11 to 15, both inclusive;

Page 144, line 1;

Page 147, lines 8 to 15, both inclusive;

Page 148, lines 23 to 25, both inclusive;

Page 149, lines 6 to 12, both inclusive;

Page 149, line 25, to page 150, line 2, both inclusive;

Page 151, lines 3 to 13, both inclusive;

Page 152, lines 9 to 14, both inclusive;

2. Defendant's Exhibit 16, an authenticated copy of official report of proceedings before the Board of Tax Appeals in Los Angeles California, on June 10, 1931.

(Note: Print or photostat the following portions only, to wit):

Lines 15 to 24, both inclusive, of page E-8;

Lines 2 to 10, both inclusive, of page E-9;

Lines 22 and 23, of page E-9;

Lines 3 to 7, both inclusive, of page E-10;

Lines 9 to 21, both inclusive, of page E-11;

Lines 5 to 15, both inclusive, of page E-12;

Lines 11 to 13, both inclusive, of page E-13;

Lines 1 to 5, both inclusive, of page E-16;

Lines 15 to 21, both inclusive, of page E-24;

Lines 8 to 21, both inclusive of page E-26;

Lines 6 to 11, both inclusive, of page E-27;

Lines 1 to 5, both inclusive, of page E-30;

Lines 5 to 12, both inclusive, of page E-32;

Lines 15 to 17, both inclusive, of page E-32;

Line 21 of page E-32, to line 18 of page E-33;

Lines 22 and 23 of page E-33;

Lines 16 to 22, both inclusive, page E-34;

Line 25 of page E-34 to line 9 of page E-35, both inclusive;

Lines 18 to 24, both inclusive, of page E-35;

Line 6 of page E-37 to line 18 of page E-38;

Line 4 to line 19, both inclusive, of page E-40;

Line 25 of page E-40, to line 6 of page E-41, both inclusive;

Lines 9 to 12, both inclusive, of page E-42;

Line 22 of page E-42, to line 10 of page E-43;

Line 17 to line 23, both inclusive, of page E-43;

Lines 5 to 10, both inclusive, of page E-61;

All of page E-65;

3. Plaintiff's Exhibit 1.
4. Plaintiff's Exhibit 2.
5. Plaintiff's Exhibit 3.
6. Plaintiff's Exhibit 4.
7. Plaintiff's Exhibit 5.
8. Plaintiff's Exhibit 6.
9. Plaintiff's Exhibit 7.
10. Plaintiff's Exhibit 8.
11. Plaintiff's Exhibit 10.
12. All of plaintiff's Exhibit 11, except such part designated as part of record by appellant.
13. All of plaintiff's Exhibit 12, except such part designated as part of record by appellant.
14. All of plaintiff's Exhibit 14, except such part designated as part of record by appellant.
15. All of plaintiff's Exhibit 15, except such part designated as part of record by appellant.
16. All of plaintiff's Exhibit 16.
17. All of plaintiff's Exhibit 17.
18. All of plaintiff's Exhibit 18.
19. This designation.

(Note: Omit title of Court, cause, and signatures.)

Dated January 25, 1943.

CLAUDE I. PARKER,
RALPH W. SMITH, and
JOHN MOORE ROBINSON,
By JOHN MOORE ROBINSON,
Attorneys for Appellee.

[Endorsed]: Filed Jan. 27, 1943. Paul P. O'Brien, Clerk.

No. 10351.

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

NAT ROGAN, Collector of Internal Revenue for the Sixth District of California,

Appellant,

vs.

JAMES A. KAMMERDINER, individually and as Surviving Joint Tenant of Myrtle B. Kammerdiner, deceased,

Appellee.

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

BRIEF FOR THE APPELLANT.

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Building, Los Angeles.

FILED
APR 20 1943
PAUL P. O'BRIEN,
CLERK

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No. 10351.

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

NAT ROGAN, Collector of Internal Revenue for the Sixth District of California,

Appellant,

vs.

JAMES A. KAMMERDINER, individually and as Surviving Joint Tenant of Myrtle B. Kammerdiner, deceased,

Appellee.

BRIEF FOR THE APPELLANT.

Opinion Below.

The findings of fact and conclusions of law of the District Court [R. 55-66] are unreported.

Jurisdiction.

This appeal involves federal estate tax and interest in a total amount of $22,090.65. The tax and interest were paid by the taxpayer on May 10, 1938. [R. 57.] A claim for refund was filed on July 7, 1939 [R. 57], and an amended claim for refund was filed on October 7, 1939. [R. 27-45, 57.] The original and amended claims were rejected by the Commissioner on February 2, 1940. [R. 45-46, 58.] On June 12, 1940, the taxpayer instituted

an action in the District Court for recovery of the taxes and interest paid. [R. 2-46.] The judgment of the Court, allowing the claim in full, was entered on July 15, 1942. [R. 67-68.] On July 22, 1942, the Collector filed a motion for a new trial and to amend and add findings and conclusions. [R. 69-82.] The motion was denied by the District Court on August 5, 1942. [R. 84.] Within three months and on October 20, 1942, the Collector filed a notice of appeal [R. 84-85], pursuant to the provisions of Section 128(a) of the Judicial Code, as amended by the Act of February 13, 1925.

Questions Presented.

1. Whether one-half of the Kammerdiner rotary jar business and its assets, owned in joint tenancy by taxpayer and his wife in 1935, "originally belonged" to the deceased wife, so that the value thereof is includible in her gross estate, within the meaning of Section 302(e) of the Revenue Act of 1926, as amended.

2. If one-half of the rotary jar business and its assets did not originally belong to the deceased wife, whether she acquired her one-half interest therein for an adequate or full consideration in money or money's worth, so that the value of her interest is includible in her gross estate, within the meaning of Section 302(e) of the Revenue Act of 1926, as amended.

Statutes and Regulations Involved.

The applicable statutes and regulations are printed in the Appendix, *infra*.

Statement.

The facts as here stated are summarized from the evidence adduced by both parties [R. 91-477], and from the findings of the District Court[1] [R. 56-65]:

James A. Kammerdiner (hereinafter referred to as "taxpayer") is the surviving husband of Myrtle B. Kammerdiner (hereinafter referred to as "wife") who died on April 4, 1935, at Los Angeles, California. [R. 56.]

Appellant is the duly appointed, qualified, and acting Collector of Internal Revenue for the Sixth District of California. [R. 3, 56.]

In 1908 taxpayer and his wife were married in Orange County, California, and from that time until the wife's death they resided in the State of California. [R. 96.] At the time of marriage neither the taxpayer nor his wife owned any assets or property, except that taxpayer had about $200 in cash. [R. 97, 98.] At this time they agreed orally that all of the earnings and property which they might acquire would be owned equally and that the wife would have a vested one-half interest therein. [R. 199-200, 201-202, 216, 253-254, 255-256.] Neither taxpayer nor his wife has ever acquired any property by gift or inheritance. [R. 109.]

[1]The District Court's findings regarding the deceased wife's interest in the rotary jar business consist only of ultimate findings. Since the extent of the wife's interest in that business for purposes of the federal estate tax is the issue involved, we have set out the evidentiary facts disclosed by the record in detail. We contend that the District Court's ultimate findings crumble when the evidentiary facts are considered. See argument, *infra*.

At the time of the marriage, taxpayer was employed as an oil well driller on a salary basis and he continued to engage in that work until the year 1923. [R. 98.] His only source of income prior to 1923 was his salary for personal services. [R. 108-109, 111.]

Commencing in 1909, taxpayer's wife operated and managed a large boarding house situated on the oil lease on which taxpayer was employed. [R. 98, 110, 112, 443.] Her profits saved from this venture in six years of operation amounted to more than $3,000. [R. 98, 201, 443.]

In 1909, about the time that she started the boarding house venture, taxpayer and his wife made an oral agreement, similar to the agreement at the time of marriage, that all of her profits from the boarding house and all of his earnings in the oil fields would be deposited in a joint account in both their names and that all their earnings and property would be owned and divided equally between them. [R. 99, 112, 114.] This agreement was identical with the agreement made in 1923 in connection with the rotary jar business, hereinafter referred to. [R. 99, 111-112.]

Thereafter all of taxpayer's salary and all of the wife's profits from the boarding house were deposited in a joint banking account standing in both names, against which either party had an unrestricted right to draw. [R. 99, 112-113, 114, 189, 201, 213.] In addition to the joint account, taxpayer kept a small emergency account in his name in a town near the oil lease on which he was employed. [R. 113.] From 1909 until the wife's death in 1935, taxpayer and his wife continued to maintain joint bank accounts, in which they deposited all of their receipts, except for the emergency fund, from whatever source derived. Some of the joint accounts were in the

names of taxpayer or his wife, or the survivor. [R. 113-114, 117-144, 145-147.]

Between 1909 and 1923, taxpayer and his wife purchased several pieces of real estate, paying the purchase price from their joint bank account. The title to these properties was originally taken in the name of taxpayer but was subsequently changed to both their names. [R. 190-192, 193-194, 195-196.] The first piece of property was purchased shortly after their marriage and before the joint bank account had been started. The first installments of the purchase price of that property were paid from taxpayer's salary. [R. 186-187, 188, 189.] Taxpayer always consulted with his wife before any property was purchased. [R. 191.]

In 1922 the taxpayer invented the "Kammerdiner rotary jar," which was a device for recovering lost tools and parts from oil wells. [R. 101-102, 148, 443.] Taxpayer's wife urged him to procure a patent thereon and she hired a patent attorney, who filed an application for a patent in October, 1922. A patent issued in the name of taxpayer was obtained for the device a year later. [R. 102, 106, 148, 207-208, 262, 433, 444, 445-446, 467.] The costs of obtaining the patent and the patent attorney's fees were paid from the joint bank account of taxpayer and his wife. [R. 433.] The first set of jars was manufactured in April, 1923, and the cost thereof was also paid with funds from the joint account. [R. 445, 461.]

In April, 1923, after the rotary jar had first been tested, taxpayer and his wife entered into an oral agreement providing that they would engage together in the business of manufacturing, renting and selling rotary jars as partners or as joint tenants with right of survivor-

ship; that all their property would be available for use in the business; that all profits or losses from the business would be divided equally; that the wife had a vested one-half interest in all the patents, property, and profits of the business as her separate property; that taxpayer would take care of the field work in connection with the business and that the wife would tend to all the office work; and that the joint bank accounts would be continued as in the past. [R. 100, 199, 200, 201, 206, 207, 252, 253, 255, 256, 295-298, 301, 302-305, 445-446, 465, 468-469.] The agreement included not only the rotary jar business and the patents but all other property, whether it stood in the name of taxpayer or his wife, and property which they might acquire. [R. 202, 203, 464-465.]

The same agreement had existed since marriage with respect to all their property and income, and there was no difference between the 1923 agreement and the one made at the time of marriage. [R. 199-200, 201, 202, 216, 253, 254, 256.]

Thereafter taxpayer and his wife engaged as partners or joint tenants in the business of manufacturing and renting or licensing rotary jars in the United States. In foreign countries the jars were sold outright. The capital required to start the business was obtained from the joint bank accounts of taxpayer and his wife. [R. 107, 206, 253, 264, 460-461, 462.]

The business was conducted under the name of James Kammerdiner because he was well-known in the oil business and taxpayer and his wife thought that his name would be more advantageous from a business standpoint. [R. 108, 463-464, 471.]

The taxpayer supervised the manufacture of rotary jars and performed the field work in connection with their

leasing and operation. [R. 253-254, 448.] His wife managed the office and performed all duties in connection therewith, devoting her full time thereto. She did the banking, handled the finances and correspondence, kept the books, made agreements and gave orders for the manufacture of rotary jars; received orders from and investigated the credit of customers; entered into rental contracts with customers, billed and collected the rentals due, paid bills, and attended to advertising. [R. 144-145, 216, 252, 253-254, 447, 448-449, 451-452, 464, 469, 471, 473.] She received no salary for her services at any time. [R. 252, 255, 464, 473.]

Taxpayer and his wife discussed together everything of importance in connection with the business and their investments, and each had an equal voice therein. [R. 202-203, 254, 451-452, 470.]

The business was successful and large profits were derived. All receipts from the rotary jar business were deposited in the joint accounts and all expenses in connection therewith were paid from the joint accounts. [R. 145-147, 206, 264, 434, 450, 459, 467, 470, 472-473.]

Prior to the wife's death in 1935 some 18 or 20 additional patents were acquired in taxpayer's name. They were purchased to protect the original patent and to prevent infringements and lawsuits. The prices paid for the patents ranged from $1,000 to $34,000, in one instance, and the purchase price for the patents was paid from the profits from the business deposited in the joint accounts. At the time of the wife's death, the basic patent was the most valuable. [R. 102-103, 107, 208, 210, 211, 212-213, 434-435.]

The profits from the rotary jar business were reinvested by taxpayer and his wife in real estate, stocks and bonds,

orange groves, and other properties. All of the property so acquired was owned in joint tenancy. [R. 148, 184, 186, 196, 197.] Whatever they acquired at any time was paid for with money which they both owned. [R. 207.]

On January 3, 1928, the taxpayer and his wife executed a written agreement which remained in effect until the wife's death. [R. 103-105.] The agreement stated, declared, and agreed [R. 105]—

> that the business of manufacturing, renting and selling Rotary Jars, heretofore conducted by them under the name of James A. Kammerdiner, at 237 South Highland Avenue, Los Angeles, California, all the assets of which business is their community property, is now and all increase or change thereof shall be, their joint property with right of survivorship.

This agreement merely reduced to writing the agreement which had been in existence between them from the date of their marriage and which was reiterated in connection with the boarding house venture and again when the jar business was commenced. It did not change the manner in which the business was conducted. [R. 104, 190, 453-454, 456, 476.] When the agreement was made, any property then standing in the name of either party individually was transferred to the names of both parties as joint tenants. [R. 187, 190, 194.]

In 1931 taxpayer and his wife filed a certificate as required by Section 2466 of the Civil Code of California, in which they gave notice that they "have formed a partnership and are transacting business as copartners in the City of Los Angeles, County of Los Angeles, State of California, under the name of 'Kammerdiner Rotary Jar Company.'" [R. 214, 215.] The certificate was filed

at the instance of the wife, in order to protect them in the event of suit against them or if it became necessary to sue for infringement of any patents. [R. 215, 265.] The agreement already existing between taxpayer and his wife was not changed at the time of filing the certificate. [R. 266.]

Partnership income tax returns for the business were filed for the years 1925, 1926, and 1928 in the name of "Mr. and Mrs. J. Kammerdiner dba J. Kammerdiner." The returns stated January 1, 1925, as the date of organization of the partnership. [R. 308-312, 313-316, 317-321.] The partnership return for the year 1925 contained the following statement [R. 312]:

> Both Mrs. and Mr. Kammerdiner work in the business and agreement has been made that Mrs. Kammerdiner receives vested interest in one half of property and income, making hers separate property.

Similar statements appear on the returns for 1926 and 1928. [R. 316, 319.] Taxpayer and his wife filed individual income tax returns for the years 1925, 1926, and 1928, and each reported one-half of the income from the partnership as his or her income. On each of the returns the business of taxpayer and of his wife was stated to be "Partner in Rotary Jar Business." [R. 325-326, 328-331, 332-333, 336-339, 340-340A, 342.] In their individual income tax returns filed for the year 1929, taxpayer and his wife each stated that his occupation was "Partner or Joint Owner in Rotary Jar Business." [R. 344, 346.] For the years 1925 to 1935, inclusive, taxpayer and his wife each reported one-half of the income received from the Kammerdiner rotary jar business. [R. 63.]

For the years 1925, 1926, and 1927 the Commissioner determined deficiencies in income tax against the taxpayer on the ground that the rotary jar business and the income therefrom were community property of the type acquired by California spouses prior to July 29, 1927 and therefore belong solely to the taxpayer. [R. 61-62.] The taxpayer petitioned the Board of Tax Appeals for a redetermination of the proposed deficiencies for the years 1925, 1926, and 1927. [R. 63, 219-234, 236-250.] The petitions filed with the Board, sworn to by taxpayer, contained the following allegations [R. 220-221, 237-239]:

> Ever since he started to work on his patent rotary jar, from which patent his big increase in income has been derived, his wife has acted as his partner, in his business as well as in his home, assisted him in his work, kept the books and accounts of the business, taken care of all the correspondence and collection of accounts, and states further that his wife has been consulted and conferred with by petitioner in practically every detail of the business. It was understood then, as it had been understood for years prior to that time that petitioner and his wife were in partnership, and on the Income Tax Return for 1925 there appeared this notation, which was sworn to by Petitioner "Both Mr. and Mrs. Kammerdiner work in the business and agreement has been made that Mrs. Kammerdiner receives vested interest in one half of the property and income making hers separate property."
>
> * * * * * * * *
>
> Mrs. Kammerdiner did not receive a salary of any definite amount for work done by her in the business,

neither did petitioner as both drew out of the business whatever they required and it was agreed between petitioner and his wife that the joint account which they had always carried in bank would be continued and that Mrs. Kammerdiner would be entitled to half of the profits of the business in return for the work she performed as office manager.

Attached to the petitions were affidavits of Mrs. James Kammerdiner. [R. 232-233, 247-248.] They were substantially the same and one of them reads in part as follows [R. 247-248]:

She further states, upon oath, that when petitioner, Mr. James Kammerdiner, started to work on his patent rotary jar, as far back as the year 192...., she assisted him in every way possible, by counsel, by clerical work and by co-operation; she further states, upon oath, that while petitioner was employed out in the oilfields and other places selling his patent rotary jar, she was employed in the office and took care of all office details, keeping the books, attending to correspondence and phone calls, attending to sending out statements and collecting accounts, and generally acting as inside manager of the business. She further states upon oath, that she received no fixed salary for this work as it was understood and verbally agreed upon between her and petitioner that she had and was entitled to one half interest in the business and one half of the profits of the business, and that as there never had been any signed agreement between her and petitioner, her husband, it being always understood that they were partners in every sense of the word, it was verbally agreed

to continue everything in joint names and account in banks in joint names, as has always been done in the past.

She further states, upon oath, that it has always been her understanding that petitioner and herself were in partnership in the patent rotary jar business as in everything else since marriage.

After hearing, the Board of Tax Appeals rendered an opinion in which it stated that the only issue was whether taxpayer and his wife were equal partners in a certain business in the taxable years. It held that taxpayer and his wife joined together in April of 1923 to carry on a business enterprise for their mutual benefit, and that a partnership existed. See *Kammerdiner v. Commissioner*, 25 B. T. A. 495, 497. [*Cf.* R. 64.] The Commissioner did not appeal from the Board's decision and it became final as provided by law. [R. 64.]

The fair market value of a one-half interest in the rotary jar business and its assets at the date of the wife's death was $160,000. [R. 65, 95.]

On March 16, 1936, the taxpayer, as surviving joint tenant of Myrtle B. Kammerdiner, filed with the Collector of Internal Revenue for the Sixth District of California (appellant herein) a federal estate tax return on Form 706 showing a total net federal estate tax due of $4,332.27, which the taxpayer paid. [R. 3-4, 56.]

The return listed as jointly owned property 22 parcels of real estate, shares of stock, United States and other bonds, promissory and trust deed notes, cash in seven bank accounts, American Express travelers checks, postal savings certificates, and jewelry, of a total value of $285,-

809.23. One-half of the value of these properties was included in the wife's gross estate subject to estate tax. [R. 149-183.] The return did not include any amount for the rotary jar business but contained the following statement with respect thereto [R. 177]:

> Decedent and her surviving husband were in the business of leasing rotary jars for oil wells, which business had no tangible assets save a few old jars of little or no value.

In answer to the question on the return "Did the decedent, at the time of his death, own any interest in a copartnership or unincorporated business?" the taxpayer answered "Yes." [R. 177.]

On March 18, 1938, the Commissioner of Internal Revenue made a final determination of a deficiency in federal estate tax in the amount of $23,816.11, based on the inclusion in the gross estate of a one-half interest in the Kammerdiner rotary jar business which he valued at the date of death as $175,000. [R. 5, 21-22, 23-24, 56.]

On May 10, 1938, the taxpayer paid the Collector $19,706.44, the total amount of the deficiency less proper credit for California inheritance tax of $4,109.67, together with interest thereon from April 4, 1936, to the date of payment in the amount of $2,384.21, or a total payment of deficiency and interest of $22,090.65. [R. 6, 56.]

On July 7, 1939, the taxpayer filed with the Collector a claim for refund of federal estate tax and interest claimed to have been erroneously and illegally collected in the amount of $22,090.65. [R. 7, 56.] On October 17, 1936, the taxpayer filed an amended claim for refund in the same amount in substitution of the former claim.

[R. 27-45, 57.] On February 2, 1940, the Commissioner rejected the claims for refund in their entirety. [R. 45-46, 58.] Suit was instituted in the District Court on June 12, 1940. [R. 2-46.]

The District Court made the following findings, which appellant contends are erroneous findings as a matter of law:[2]

By the terms of the agreement of January 3, 1928, the rotary jar business and property were joint tenancy property, and no part of it is a proper part of the wife's gross estate for estate tax purposes, for the reason that the wife was not the original owner of any part thereof and any interest of the wife therein was not received for a valuable or adequate consideration. [R. 59, 61.] The whole of the wife's interest in the business was received by her from taxpayer as a gift, without any consideration, valuable, adequate, or otherwise. [R. 61.]

The District Court concluded as a matter of law (1) that Myrtle B. Kammerdiner and James A. Kammerdiner owned the rotary jar business and the assets thereof as joint tenants with the right of survivorship; (2) that the property which was invested in or entered into the creation of the joint tenancy property was all contributed by James A. Kammerdiner; and (3) that the taxpayer is entitled to recover from the appellant the amount of $22,090.65 with interest thereon at the rate of 6% from May 10, 1938. [R. 65-66.]

[2]Although the District Court included these as findings of fact, they are in reality conclusions of law, or mixed questions of law and fact, depending on the legal effect of the oral agreements and acts of taxpayer and his wife. As such, they are reviewable as to their correctness.

Statement of Points to be Urged.

The appellant's statement of points, all of which are relied on herein, is set out in full in the record at pages 478-484 in the form of assignments of errors. They may be grouped into two principal points, which will form the basis for the argument.

1. One-half of the rotary jar business and its assets originally belonged to the deceased wife and is includible in her gross estate.

2. The wife acquired her one-half interest in the rotary jar business and its assets for an adequate and full consideration in money or money's worth.

Summary of Argument.

I.

Section 302(e) of the Revenue Act of 1926 *prima facie* requires the inclusion in the wife's gross estate of at least one-half of the value of the rotary jar business owned in joint tenancy at the time of her death. Exclusion of the amount from the gross estate can be secured only by a clear showing that no part of the business originally belonged to the wife.

The taxpayer and his wife at the time of marriage made an oral agreement, which is effective and enforceable under California law, that all of the property which they might acquire would be owned equally by them, with right of survivorship. The oral agreement was renewed in 1909, at which time a joint bank account was established for the deposit of all their income. In 1923 the oral agreement was confirmed prior to their engaging in the rotary jar business. The understanding at that time provided in part that the business would be carried on by

both husband and wife jointly, with right of survivorship, and that the wife had a vested one-half interest in the assets and profits of the business. Her interest came into being with the inception of the business and consequently originally belonged to her within the meaning of Section 302(e). The District Court disregarded the oral agreement between taxpayer and his wife, and its judgment must therefore be reversed.

The ownership of the rotary jar business by the spouses was manifestly of the same type as that of all other property acquired by them prior to 1927. Yet the other property admittedly is includible in the gross estate; no reason was pointed out by the District Court, nor is any reason perceivable, for treating the rotary jar business any differently with respect to inclusion in the wife's gross estate.

But in any event the funds deposited in the joint bank accounts payable to taxpayer or his wife or survivor were owned in joint tenancy and any property purchased with such funds retained its character of joint tenancy property under California law. The evidence shows that the cost of the original patent and the initial capital of the business were all paid from the joint accounts and that all subsequent receipts and disbursements in connection with the business were put through the joint accounts. The wife's share of the profits subsequent to 1923 constituted her separate property, and upon reinvestment of her profits she became the original owner of the business and its assets to that extent at least. Taxpayer failed to adduce any proof by which it can be determined what portion of the value in 1935 is derived from the investment of her separate funds. In the absence of such proof, the Commissioner's determination must be approved.

Lastly, taxpayer may not in this case, in order to escape tax, abandon the position which he took from 1925-1935 in his income tax returns. That position was that his wife's interest in the rotary jar business was her separate property, and it may not be changed here.

The conclusion of the District Court that the rotary jar business was old-type community property prior to January 3, 1928, can not stand, because the Board of Tax Appeals in a prior decision which was *res judicata* had decided that the business was not community property during 1925, 1926, and 1927, by virtue of an oral agreement in 1923 creating a partnership.

II.

If the wife paid an adequate and full consideration in money or money's worth for her interest as a joint tenant in the rotary jar business, the value of that interest must be included in the gross estate under Section 302(e).

The wife furnished one-half of the initial capital of the business. This clearly is a monetary consideration for the acquisition of her interest. Moreover, she performed all of the office work in connection with the business from 1923 until her death, pursuant to her oral agreement with the taxpayer that they would carry on the business together, sharing profits and losses; that she would have a half interest in the business; and that she would handle all the office work. Under the decisions the contribution of capital and performance of services pursuant to contract constitute full consideration in money's worth for the acquisition of a joint tenant's interest in a business. Accordingly, the statute requires that the wife's gross estate include the value of her interest in the business.

ARGUMENT.

I.

One-half of the Kammerdiner Rotary Jar Business and Its Assets Originally Belonged to the Deceased Wife and Is Includible in Her Gross Estate.

The District Court found [R. 60] that at the date of the wife's death the business and assets of the Kammerdiner Rotary Jar Company were owned by taxpayer and his wife in joint tenancy, by virtue of the agreement of January 3, 1928. Section 302(e) of the Revenue Act of 1926, as amended (Appendix, *infra*), requires the inclusion in the gross estate of the decedent's interest in property owned in joint tenancy with another person, except such part as may be shown to have originally belonged to the other person, and not to have been acquired for an adequate and full consideration in money or money's worth. Under this section one-half of the value of the rotary jar business was *prima facie* includible in the wife's gross estate, because it was owned in joint tenancy. Treasury Regulations 80, Article 23 (Appendix, *infra*). To secure its exclusion from the wife's estate the taxpayer had the burden of proving that he originally owned the entire business and that his wife acquired her interest without paying full consideration. *Foster v. Commissioner,* 90 F. (2d) 486 (C. C. A. 9th), affirmed *per curiam,* 303 U. S. 618, rehearing denied, 303 U. S. 667.

The District Court held [R. 60-61] that the rotary jar business was old-type community property and originally belonged to the taxpayer in its entirety. The Government contends that this holding is erroneous and that the wife owned originally one-half interest in the business and its assets, by reason of an oral agreement between husband

and wife, dating from the time of marriage, giving her a separate interest in all property acquired by them.

In the absence of some other agreement, all property acquired by either husband or wife after marriage, except that acquired by gift or inheritance, becomes community property in California. Prior to the enactment of Section 161a of the Civil Code of California (Appendix, *infra*) in 1927, a wife had only an expectancy, but that section gave her a present and vested interest in all community property acquired after July 29, 1927. *Gillis v. Welch,* 80 F. (2d) 165 (C. C. A. 9th).

But a husband and wife may agree to hold their property in some way other than as community property. Under Section 158 of the Civil Code (Appendix, *infra*) a husband and wife may make any agreement respecting property, which either might make if unmarried. They may agree to hold property as joint tenants, tenants in common, or as community property. Section 161 Civil Code of California (Appendix, *infra*). Agreements so made by husband and wife have been recognized and given effect for tax purposes.

Where the parties agreed that the wife should have a vested half interest in community property acquired before July 29, 1927, such as she would have had in the property under California law if acquired after that date, only one-half of the property acquired before that date may be included in the husband's estate for estate tax purposes, the wife's interest having vested upon the execution of the agreement. *United States v. Goodyear,* 99 F. (2d) 523 (C. C. A. 9th).

An agreement made at the time of marriage by a husband and wife that the earnings of each were to remain

his or her separate property, free of any community interest, has also been recognized as valid and has precluded taxation of the wife's earnings as the husband's income. *Helvering v. Hickman,* 70 F. (2d) 985 (C. C. A. 9th); *Marshall v. United States,* 26 F. Supp. 474 (C. Cls.), certiorari denied, 308 U. S. 597.

In *Anderson v. Commissioner,* 78 F. (2d) 636 (C. C. A. 9th), this Court held that an oral agreement between husband and wife that each should own a separate one-half interest in all of their income and property is binding and enforceable; and that each spouse is taxable on one-half of the income received from every source. See also *Dollar v. Commissioner,* 41 B. T. A. 869; *Fletcher v. Commissioner,* 44 B. T. A. 429; *Young v. Young,* 126 Cal. App. 306, 14 P. (2d) 580; *Lagar v. Erickson,* 13 Cal. App. (2d) 365, 56 P. (2d) 1287; holding that oral agreements are effective in California to transmute community property to separate property.

It is therefore clear that the oral agreement made by taxpayer and his wife at the time of marriage, and reiterated in 1909 and again in 1923, must be given effect. As testified to by the taxpayer, the oral agreement with his wife at the time of marriage was that all earnings and property which they might acquire would be owned equally, with right of survivorship, and the wife would have a vested one-half interest therein. [R. 199-200, 201-202, 216, 253-256.] In 1909, when the wife went into business on her own, it was again agreed that all their property would be owned and divided equally and that all earnings and profits would be deposited in joint bank accounts in both their names. [R. 99, 111-112, 114.] Again in April, 1923, after the first rotary jar had been successfully tested, taxpayer and his wife specifically agreed that they would

engage together in the business of manufacturing, leasing, and selling rotary jars as joint tenants with right of survivorship and as partners; that the wife had a vested one-half interest as separate property in the patent rights, property and profits of the business; that all the property they then owned would be available for use in the business and that the joint bank accounts would be continued in connection with the business; that the taxpayer would take care of the field work and that the wife would handle all the office work; and that profits and losses would be shared equally. [R. 100, 199-201, 206-207, 252-253, 255-256, 295-298, 301-305, 445-446, 465, 468-469.][3] In his testimony taxpayer referred to the arrangement between them as a joint tenancy with right of survivorship [R. 104, 199-200, 255-256]; as an agreement "to divide 50-50, win or lose" [R. 100, 112, 206]; as giving the wife a vested interest in one-half of the property and income [R. 199, 201-202, 312]; and as creating a partnership [R. 216, 253-254, 255, 256; and see record before Board of Tax Appeals, R. 439-476].[4]

The existence of a joint tenancy in all their property is substantiated by the fact that from the beginning joint bank accounts in the names of husband and wife, payable to the survivor, were maintained, in which were deposited all earnings, profits, and income from whatever source and

[3]At one point in the record [R. 109-110] the taxpayer testified that he never had an agreement with his wife that her wages or earnings should be her separate property or belong separately to her. While this might be regarded as somewhat inconsistent with the other testimony, it is clear that the taxpayer meant that they did not intend her earnings to be segregated from the joint funds and be handled separately. Given this construction, the testimony is consistent with all the other evidence on the point.

[4]The effect of the Board's holding that a partnership was created in 1923 is discussed *infra*. For purposes of the present point we discuss only the effect of a joint tenancy between taxpayer and his wife, created by the oral agreements. Either theory supports the conclusion that one-half of the rotary jar business originally belonged to the wife.

against which either party had an unrestricted right to draw [R. 99, 111-112, 113-114, 117-144, 201, 213];[5] and by the further fact that the written agreement in 1928 [R. 105], which merely reduced to writing the oral agreement which had always existed between taxpayer and his wife [R. 104, 190, 453-454, 456, 476], recited that all property was held in joint tenancy with right of survivorship. It is evident then that the oral agreement at the time of marriage established a joint tenancy in all property acquired by either spouse, and the wife's interest therein constituted her separate property. *Siberell v. Siberell,* 214 Cal. 767, 7 P. (2d) 1003; *Young v. Young, supra; Meyer v. Thomas,* 37 Cal. App. (2d) 720, 100 P. (2d) 360.

Thus at the inception of the rotary jar business the wife owned a one-half separate interest in the business and its assets by virtue of the existing oral agreement which was reaffirmed at that time. The business never became community property, but came into being as separate property. *Helvering v. Hickman, supra; Anderson v. Commissioner, supra.* It should be noted that the 1923 agreement specifically provided that the wife's one-half interest embraces the rights under the patent,[6] all property and profits of the rotary jar business. [R. 199, 203, 206, 255, 312, 445, 464-465.] It follows that one-half of the business and its assets originally belonged to the wife and is includible in her gross estate.

The taxpayer testified that he did not understand the technical distinction between community property, partner-

[5]A joint tenancy clearly existed as to the funds in these accounts. *Estate of McCoin,* 9 Cal. App. (2d) 480, 50 P. (2d) 114; *Young v. Young,* 126 Cal. App. 306, 14 P. (2d) 580; *Bank of America Nat. Trust & Savings Ass'n v. Rogan,* 33 F. Supp. 183 (S. D., Cal.).

[6]Rights to use a patent may be transferred orally to a business, and become a part of the assets of the business. *Hill v. Miller,* 78 Cal. 149, 20 Pac. 304; *Lyon v. MacQuarrie,* 46 Cal. App. (2d) 119, 115 P. (2d) 594.

ship, and joint tenancy in 1923 or 1928. [R. 265.] On the basis of this it may be argued that there was no intention to change by agreement the ordinary community system, as fixed by law. Yet it is significant that throughout his testimony the taxpayer used the word "survivorship" in connection with his agreement with his wife. And prior to 1923 the joint bank accounts were made payable to husband or wife or "survivor."[7] [See, for example, the account started in 1921, R. 117-120.] The word "survivor" is not beyond the ken of the average or even an uneducated layman, even though the technicalities of the various legal tenancies may be. Survivorship is entirely foreign to the concept of community ownership, yet the spouses here emphasized it. And even if the taxpayer and his wife were not fully aware of the incidents of a joint tenancy or a partnership, they were very definite in their desire to create a status in which each had an equal and existing one-half interest, with the whole going to the survivor. It must be concluded that the legal effect of their agreement was to create a joint tenancy.

The reasons why the District Court ignored the oral agreement are not known. Its minute order states [R. 54] that "the joint tenancy was created in 1928, *confirming the oral agreement of 1923,* * * *." (Italics supplied.) The court's failure to refer to the oral agreement of 1923 in its findings may be attributed to an oversight or to a belief that an oral agreement between spouses is not valid to alter the character of community property. Either reason constitutes reversible error.

[7]The Government requested the taxpayer to produce all the bank books but he was unable to produce the books for the years prior to 1921. [R. 113-114.]

It has been seen that the District Court failed to consider material evidence in reaching its conclusion. Approached logically, its decision is likewise not sustainable. It is apparent that if the rotary jar business constituted old-type community property which was transmuted to joint tenancy property solely by the written agreement of January 3, 1928, as the District Court held, the same is true of all other property owned by the spouses. If no effective oral agreement changing the method of owning property existed prior to 1928, the real estate, stocks, and bonds acquired prior to 1923 with joint funds of the spouses and subsequent to 1923 with profits from the rotary jar business were also old-type community property. When transmuted to joint tenancy property in 1928, those properties, like the rotary jar business, would neither have been originally owned by the wife nor acquired by her for any consideration. Hence no part would have been includible in her gross estate. Yet taxpayer did include one-half of all other joint tenancy property in the wife's gross estate and has made no contention that they were erroneously included; nor did the District Court so hold. The inclusion of those properties could only be justified on the theory that an oral agreement existed under which a one-half interest in the properties originally belonged to the wife or that she paid consideration therefor. Yet the same agreement or consideration would also require the inclusion of a one-half interest in the rotary jar business.

But even if the oral agreement is construed as not effective to vest in the wife a one-half interest in the rotary jar business, the taxpayer's claim must be denied for another reason. It is the law of California that where joint bank accounts, payable to either party or the survivor, are established, as in this case, a joint tenancy is created as to those

funds; that the funds are the separate property of each joint tenant, and neither spouse may thereafter claim that the funds were community owned. *Bank of America Nat. Trust & Savings Ass'n v. Rogan,* 33 F. Supp. 183 (S. D. Cal.); *Wallace v. Riley,* 23 Cal. App. (2d) 669, 74 P. (2d) 800; *Estate of McCoin,* 9 Cal. App. (2d) 480, 50 P. (2d) 114; *Young v. Young, supra; Estate of Gurnsey,* 177 Cal. 211, 170 Pac. 402. And the property thereafter purchased with such joint funds retains the character of jointly owned property, even though title to such property is taken in the husband's name. *Estate of Harris,* 169 Cal. 725, 147 Pac. 967.

There can be no question, therefore, that at the very least the joint bank accounts, payable to taxpayer or wife or survivor, were joint tenancy property, in which the wife had a separate one-half interest. They therefore were not community property. *Siberell v. Siberell, supra.* These accounts were established immediately after marriage.

The evidence shows that the entire cost of obtaining the original Kammerdiner patent, the cost of manufacturing the first rotary jar, and the original capital of the business were paid from the joint accounts. [R. 433, 445, 460-462.] Thus the wife became the original owner of the patent, the equipment, and the business, to the extent of one-half. Thereafter all receipts from the business were deposited in the joint accounts, and all property and expenses of the business were paid for with joint funds. [R. 145-147, 206, 264, 434, 450, 459, 467, 470, 472-473.] There can be no question but that the wife's half interest in the profits of the business was her separate property after 1923; or after 1928, if the District Court's holding that she acquired her interest as a joint tenant in that year be adopted for purposes of this argument. The proof

shows that her share of the profits became a part of the joint bank accounts and was reinvested in the business and its assets. Some part of the value of the business and its assets in 1935 was consequently originally owned by the wife, because acquired with her separate property. Yet the taxpayer failed to show what part of the 1935 value was attributable to her separate property and what part to pre-1923 joint funds. The taxpayer had the burden of proof, and in the absence of proof by which such an apportionment could be made, one-half of the entire value in 1935 must be presumed to have been originally owned by her, as the Commissioner determined.

It should be observed that the taxpayer and his wife divided their income from the rotary jar business on their income tax returns from 1925 up to the time of the wife's death in 1935. [R. 63.] This was permissible only if the wife's interest in the property had become her separate property by agreement, as distinguished from the contingent interest given her in old-type community property. Cf. *United States v. Robbins,* 269 U. S. 315; *United States v. Malcolm,* 282 U. S. 792. The spouses thus secured the tax benefits over that period resulting from a division of their income. Having taken the position for over ten years that the wife's interest in the business was separate and vested, it is highly inconsistent and not in the least convincing for the taxpayer to contend now, as he must by assuming his present position, that his income in those years was understated due to erroneous treatment of his wife's interest in the rotary jar business. Such changes

of position on the part of taxpayers for the purpose of securing further tax benefits are not to be permitted. See *Orange Securities Corp. v. Commissioner,* 131 F. (2d) 662 (C. C. A. 5th); *Comar Oil Co. v. Helvering,* 107 F. (2d) 709 (C. C. A. 8th); *Lofquist Realty Co. v. Commissioner,* 102 F. (2d) 945 (C. C. A. 7th); *Robinson v. Commissioner,* 100 F. (2d) 847 (C. C. A. 6th); *Alamo Nat. Bank v. Commissioner,* 95 F. (2d) 622 (C. C. A. 5th); *Commissioner v. Farren,* 82 F. (2d) 141 (C. C. A. 10th), certiorari dismissed 299 U. S. 617.

We submit that the decision of the Board of Tax Appeals in *Kammerdiner v. Commissioner,* 25 B. T. A. 495, is *res judicata*[8] that, by virtue of the oral agreement made in 1923, the rotary jar business was not old-type community property in the years 1925, 1926, and 1927. The Commissioner of Internal Revenue determined deficiencies for the years 1925, 1926 and 1927, on the theory that the

[8]The scope of the doctrine of *res judicata* or estoppel by judgment depends upon whether the subsequent action between the same parties is upon the same claim or upon a different claim or demand. Since the instant controversy does not concern income taxes for the years 1925, 1926, and 1927, it is a different claim from that tried before the Board. The inquiry then is whether the point or question to be determined is the same as was litigated and determined by the Board in the earlier suit. *Tait v. Western Md. Ry. Co.,* 289 U. S. 620. See, also, *Sunshine Coal Co. v. Adkins,* 310 U. S. 381; *Bennett v. Commissioner,* 113 F. 2d 837 (C. C. A. 5th); *Greenbaum v. United States,* 17 F. Supp. 83 (C. Cls.); *James v. Commissioner,* 31 B. T. A. 712; *Mallery v. Commissioner,* 42 B. T. A. 793.

There could hardly be any question but that the parties are the same as in the suit before the Board. The party plaintiff in each case is James Kammerdiner. The defendant (respondent) before the Board was the Commissioner of Internal Revenue, while here it is the Collector of Internal Revenue. But it has long been settled that a former judgment as between a taxpayer and the Government or its official agent, the Commissioner, is a bar in a suit against the Collector, who is an inferior official acting under and in privity with them. *Tait v. Western Md. Ry. Co.,* 289 U. S. 620; *Pelham Hall Co. v. Carney,* 27 F. Supp. 388 (Mass.), affirmed on other grounds, 111 F. 2d 944 (C. C. A. 1st).

income of the business was from old-type community property and the entire amount was required to be reported as income by the husband. [R. 61-62.] The husband (the taxpayer in this case) appealed to the Board [R. 219-234, 236-250] and alleged that he and his wife were partners in the rotary jar business in those years, each having a vested interest in one-half of the income therefrom. [R. 220-221, 238.] The entire evidence before the Board was introduced in evidence here. [R. 439-476.] Upon the basis of that evidence the Board made findings of fact as follows (p. 496):

> After the usefulness of such device had been proved by successful tests he [taxpayer] formed a partnership with his wife, Myrtle B. Kammerdiner, for the purpose of manufacturing, renting and/or selling rotary jars to oil well drillers. * * *
>
> * * * * * * * * *
>
> When petitioner [taxpayer] determined to engage in the manufacture and distribution of rotary jars he and his wife entered into an oral agreement to share equally in the profits or losses therefrom.

It also found that the capital for beginning the rotary jar business was drawn from the joint bank account, to which the wife had contributed several thousands of dollars.

The Board concluded that in April of 1923 taxpayer and his wife joined together to carry on a business enterprise for their mutual benefit; that this was sufficient to establish a partnership; and that the taxpayer and his wife

could divide the income from the business. This constituted a holding that the rotary jar business was not old-type community property up to the end of the year 1927[9] Under the principle of *res judicata* the District Court was bound by this decision and was not free to conclude that the rotary jar business was old-type community property prior to the end of 1927. Its holding that the business was converted on January 3, 1928, from old-type community property to property held in joint tenancy is thus erroneous and the decision can not stand. Cf. *Leininger v. Commissioner,* 86 F. (2d) 791 (C. C. A. 6th), holding that a decision defining the extent of a partnership interest owned by the taxpayer is controlling in a subsequent suit involving different years.

In view of the foregoing, it is submitted that one-half of the Kammerdiner rotary jar business and its assets originally belonged to the wife, and that the value of her one-half interest in includible in her gross estate.

[9]If the income had been received from community property (acquired prior to 1927), it could not be divided and all would have been taxable to the husband. *United States v. Robbins,* 269 U. S. 315.

II.

The Wife Acquired Her One-half Interest in the Rotary Jar Business and Its Assets for an Adequate and Full Consideration in Money or Money's Worth.

Irrespective of whether a one-half interest in the rotary jar business originally belonged to the wife, Section 302(e) of the 1926 Act requires that the value of her interest as a joint tenant therein be included in her gross estate, if she paid an adequate and full consideration therefor in money or money's worth.

The District Court held that the wife's joint tenancy interest in the business was acquired from taxpayer by gift, without any consideration whatsoever. We submit that full consideration was paid by the wife for her interest.

The evidence in this case shows that the wife made profits exceeding $3,000 in amount from the boarding house venture during the early years of the marriage and that these profits were deposited in the joint bank account owned by both parties. As we have shown, the wife owned a separate one-half interest in all the moneys in the account as a joint tenant. *Estate of McCoin,* 9 Cal. App. (2d) 480, 50 P. (2d) 114; *Young v. Young,* 126 Cal. App. 306, 14 P. (2d) 580; *Estate of Harris,* 169 Cal. 725, 147 Pac. 967.

The cost of obtaining the rotary jar patent and the capital required to start the rotary jar business in 1923 were drawn from the joint accounts. The wife consequently furnished one-half of the funds required to start the business, not only because she owned one-half of the funds, but also because she had actually earned a substan-

tial amount of money which formed a part of the joint funds. This patently constituted a consideration in money for the acquisition of her interest.

But the wife also paid consideration in money's worth in the form of services for her interest in the business. The oral agreement in 1923 between husband and wife provided that they would carry on the business together, sharing profits and losses equally, and with right of survivorship; that the wife would have a vested one-half interest in all the patents, property, and profits of the business as her separate property; and that the husband would take care of the field work and the wife the office work in connection with the business. [R. 100, 199, 201, 206, 252-253, 255, 302-305, 312, 445, 446-447, 468-469.] Thereafter until her death the wife attended to all the office work, devoting her full time thereto, without receiving a salary. The services rendered consisted in part of handling the banking, finances, correspondence, bookkeeping, advertising, billing, and collecting in connection with the business, as well as arranging for the manufacture of rotary jars, and making contracts with customers for rental of the jars. Such services were in no way incidental to the marital status and were a proper subject of contract between husband and wife. Cf. *Brooks v. Brooks,* 48 Cal. App. (2d) 347, 119 P. (2d) 970; *Wren v. Wren,* 100 Cal. 276, 34 Pac. 775; *Moore v. Crandall,* 205 Fed. 689 (C. C. A. 9th); *In re Starr,* 232 Fed. 416 (N. D. Cal.).

In *Berkowitz v. Commissioner,* 108 F. (2d) 319 (C C. A. 3d), the facts were strikingly similar to the case at bar. There a husband and wife started a retail grocery business, to which the wife contributed a small amount of

cash. Throughout the years and up to the husband's death, she gave her full time to the business. She received no salary but testified that she was to share equally in the profits as a partner. The court held that the wife's services constituted a consideration in "money's worth" for a one-half interest in the profits and it remanded the case to the Board of Tax Appeals to find as a fact whether a profit sharing agreement existed, as the wife had testified. The court pointed out that the facts that the wife actually rendered services in connection with the business and that the profits were invested in property which was held jointly were persuasive evidence of the existence of an agreement. See also *Richardson v. Helvering,* 80 F. (2d) 548 (App. D. C.), and *Fletcher v. Commissioner,* 44 B. T. A. 429, which hold that where a wife renders services and contributes money to a business, pursuant to an oral agreement with her husband that she is to have a one-half interest in the business, she has acquired her interest as a joint tenant therein for an adequate and full consideration in money or money's worth.[10]

In the instant case the District Court had before it not only statements of the wife, made before the Board in the earlier case, as to the existence of the agreement and the services performed by her [R. 232-233, 247-248, 466-476] but also direct testimony by the husband agreeing in every respect with her statements. [R. 100, 199, 201, 206, 252-253, 255, 445, 446-447.] There can be no question then

[10]Contrast *Fox v. Rothensies,* 115 F. (2d) 42 (C. C. A. 3d), and *Bushman v. United States,* 8 F. Supp. 694 (C. Cls.), certiorari denied, 295 U. S. 756, where no agreement of any kind was made at the time the wife contributed her funds (*Fox* case) and services (*Bushman* case). The later acquisition of property in joint tenancy was held to be without consideration on the part of the wife, because the joint tenancy had no contractual relation to the earlier contributions.

as to the nature of the agreement, and the cited cases are controlling.

It follows that the deceased wife in this case paid full and adequate consideration by way of services and capital contributions for her interest as a joint tenant in the rotary jar business. Accordingly the value of her interest must be included in the gross estate.

Conclusion.

The conclusions of law and judgment of the District Court are erroneous, unsupported by the facts, and contrary to law and the controlling authorities. They should be set aside and vacated by this Court and judgment should be entered for the appellant.

Respectfully submitted,

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April, 1943.

APPENDIX.

Civil Code of California (1941 Ed):

SEC. 158. *Husband and wife may make contracts.* Either husband or wife may enter into any engagement or transaction with the other, or with any other person, respecting property, which either might if unmarried; subject, in transactions between themselves, to the general rules which control the actions of persons occupying the confidential relations with each other, as defined by the title on trusts.

SEC. 161. *May be joint tenants, etc.* A husband and wife may hold property as joint tenants, tenants in common, or as community property.

SEC. 161a. [*Interests in community property.*] The respective interests of the husband and wife in community property during continuance of the marriage relation are present, existing and equal interests under the management and control of the husband as is provided in sections 172 and 172a of the Civil Code. This section shall be construed as defining the respective interests and rights of husband and wife in the community property.

Revenue Act of 1926, c. 27, 44 Stat. 9:

SEC. 302. [As amended by Sec. 404, Revenue Act of 1934, c. 277, 48 Stat. 680.] The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside the United States—

* * * * * * * *

(e) To the extent of the interest therein held as joint tenants by the decedent and any other person, or as tenants by the entirety by the decedent and spouse, or deposited, with any person carrying on the banking business, in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth; *Provided,* That where such property or any part thereof, or part of the consideration with which such property was acquired, is shown to have been at any time acquired by such other person from the decedent for less than an adequate and full consideration in money or money's worth, there shall be excepted only such part of the value of such property as is proportionate to the consideration furnished by such other person: *Provided further,* That where any property has been acquired by gift, bequest, devise, or inheritance, as a tenancy by the entirety by the decedent and spouse, then to the extent of one-half of the value thereof, or, where so acquired by the decedent and any other person as joint tenants and their interests are not otherwise specified or fixed by law, then to the extent of the value of a fractional part to be determined by dividing the value of the property by the number of joint tenants;

* * * * * * * *

Treasury Regulations 80, as promulgated under the Revenue Acts of 1926 and 1932 as amended:

ART. 22. *Property held jointly or as tenants by the entirety.*—The foregoing provisions of the statute

extend to joint ownerships wherein the right of survivorship exists, regardless of when such ownerships were created. The statute specifically reaches property held jointly by the decedent and any other person or persons, or by the decedent and spouse as tenants by the entirety, or deposited with any person or institution carrying on a banking business in the name of the decedent and any other person and payable to either or the survivor, provided the decedent contributed toward the acquisition of the property so held or deposited, or acquired it by gift, bequest, devise, or inheritance. This section of the statute applies to all classes of property, whether real or personal, in the case the survivor takes the entire interest therein by right of survivorship, and no interest therein forms a part of the decedent's estate for purposes of administration. It has no reference to property held by the decedent and any other person or persons as tenants in common.

ART. 23. *Taxable portion.*—The entire value of such property is *prima facie* a part of the decedent's gross estate. But it is not the intent of the statute that there should be so included a greater part or proportion thereof than is represented by an outlay of funds which, in the first instance, were decedent's own, or more than a fractional part equal to that of the other joint owner should neither have parted with any consideration in its acquirement. Facts, which in a given case bring it within any one of the exceptions enumerated in the statute, may be submitted by the executor.

Whether the value of the entire property, or only a part, or none of it, enters into the make-up of the gross estate depends upon the following considera-

tions: (1) So much of the property (whether the whole, or a part thereof) as originally belonged to the other joint owner, and which at no time in the past had been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth, forms no part of the decedent's gross estate. (2) If the facts are otherwise the same as in (1), but the decedent paid to such other joint owner a consideration for the interest by him (the decedent) acquired in the property, then such portion of the value of the property, proportionate to the consideration so paid, constitutes a part of the gross estate.

* * * * * * * *

Service of the within and receipt of a copy thereof is hereby admitted this.....day of April, A. D. 1943.

Attorneys for Appellee.

No. 10351.

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

NAT ROGAN, COLLECTOR OF INTERNAL REVENUE FOR THE SIXTH DISTRICT OF CALIFORNIA,

Appellant,

vs.

JAMES A. KAMMERDINER, INDIVIDUALLY AND AS SURVIVING JOINT TENANT OF MYRTLE B. KAMMERDINER, DECEASED,

Appellee.

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

BRIEF FOR THE APPELLEE.

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Appellee.

BRIEF FOR THE APPELLEE.

Opinion Below.

Appellant's statement is correct.

Jurisdiction.

Appellant's statement of jurisdictional facts is correct.

Questions Presented.

1. Whether any of the patents issued or assigned to appellee constituted assets of the Kammerdiner rotary jar business.

2. Whether the entire properties contributed to the Kammerdiner rotary jar business "originally belonged" to appellee, within the meaning of section 302(e) of the Revenue Act of 1926, as amended.

3. Whether all property, if any, contributed to said Kammerdiner rotary jar business by the deceased wife of appellee was acquired by her from appellee without the payment of an adequate or any consideration therefor in money or money's worth.

Statutes and Regulations Involved.

Applicable statutes in addition to those printed in the appendix to appellant's brief are:

1. Sections 162, 163 and 164 of the Civil Code of California, the pertinent parts of which read as follows:

> §162: "*Separate property of the wife.* All property of the wife, owned by her before marriage, and that acquired afterwards by gift, bequest, devise, or descent, with the rents, issues, and profits thereof, is her separate property. . . ."
>
> §163: "*Separate property of the husband.* All property owned by the husband before marriage, and that acquired afterwards by gift, bequest, devise, or descent, with the rents, issues, and profits thereof, is his separate property. . . ."
>
> §164: "*Property acquired after marriage.* . . . All other property acquired after marriage by either husband or wife, or both, . . . is community property. . . ."

2. Section 2401(2), Civil Code.

Statement.

This statement is made for the reason that parts of appellant's statement (pages 3 to 17, inclusive, of his brief) are controverted.

The controverted parts of his statement consist largely of facts which, in his opinion, are established by the evidence but different from the facts found by the Court to be established by said evidence. For the sake of brevity we will not set out herein facts stated by appellant and not controverted, but will confine our statement to the controverted facts and cite the pertinent parts of the record at the points in the Argument in relation to said controverted facts.

In our opinion the taxpayer and his wife did not enter into any agreement at the time of their marriage or at any other time prior to April, 1923, in regard to the ownership of the earnings and property which they might acquire.

The patents issued to taxpayer for the "Kammerdiner rotary jar" [R. 102, 106, 148, 207, 208, 262, 433, 444, 445, 446, 447] were necessarily gifts to him by the Government. The Government does not sell patents. No part of said patents was assigned to or owned by taxpayer's wife or the Kammerdiner rotary jar business.

The profits saved from the boarding house operated by taxpayer's wife amounted to more than $3,000.00 [R. 98, 201, 443], but they were not her property. They were community property.

There was never, at any time, an agreement that the profits or losses of the Kammerdiner rotary jar business should be divided equally or in any other proportion. The agreement [R. 44] was that the business and all increase or change thereof should be "their joint property with right of survivorship."

Some of the additional patents acquired by taxpayer were issued to him by the Government and some of them were purchased by him and regularly assigned to him (not to the business or to taxpayer's wife) and thereby became his property.

Any property acquired by taxpayer and his wife or either of them after the creation of the joint bank accounts "was paid for with money which they both owned" as joint tenants.

The written agreement of January 3, 1928, merely reduced to writing the oral agreement of 1923. [R. 103-105.]

As stated by appellant on page 12 of his brief, the Court found that the fair market value of one-half of the Kammerdiner rotary jar business and its assets was $160,000.00. This finding was made on the assumption that all of the patents issued or assigned to taxpayer were owned by the business. [R. 10, 15, 49, 95.]

The findings referred to by appellant in the note on page 14 of his brief are findings of the ultimate facts on which the judgment is based.

Statement of Points to Be Urged.

1. All of the patents issued or assigned to appellee on tools used in the Kammerdiner rotary jar business were at all times owned by appellee and never at any time owned by the Kammerdiner rotary jar business or by appellee's deceased wife, and therefore constitute no part of her gross estate.

2. The entire capital contributed to the Kammerdiner rotary jar business "originally" belonged to appellee.

3. The wife's interest, if any, in any contributions to said rotary jar business or its capital was acquired from appellee for no consideration whatever "in money or money's worth," so that no part of the value thereof is includible in her gross estate.

4. Points 1, 2 and 3 constitute the material findings of the Trial Court and are supported by substantial testimony and therefore these findings will not be disturbed on appeal.

ARGUMENT.

I.

All of the Patents Issued and Assigned to Appellee on Tools Used in the Kammerdiner Rotary Jar Business Were at All Times Owned by Appellee and Were Never at Any Time Owned by the Kammerdiner Rotary Jar Business.

Decedent at the time of her death owned with appellee the Kammerdiner rotary jar business, as joint tenants with the right of survivorship, under a written agreement dated January 3, 1928. This is alleged in the Complaint [R. 9], admitted by the Answer [R. 48], and found by the Court [R. 59].

However, the testimony showed that this written joint tenancy agreement did not change in any particular a joint tenancy oral agreement entered into in April, 1923 [R. 104, 200, 259, 260, 265, 453, 454, 455, 456, 465, 476], and the reason given for reducing the oral joint tenancy agreement to writing was that the taxing authorities would not allow them to "split the [income] tax" unless they did so. [R. 202.] The Court in its Minute Order, ordering judgment for plaintiff states:

> "The joint tenancy was created in 1928, confirming the oral agreement in 1923 . . ." [R. 54.]

In other words, the joint tenancy existed from April, 1923, but we must look to the written agreement of January 3, 1928, for its terms. Appellant finds no fault with this holding but on pages 20, 21 and 22 of his brief in-

sists that the joint tenancy existed not only from April, 1923, but from the instant of the marriage of decedent and appellee, so that not a penny of the earnings of either from the date of marriage until the wife's death was originally community property, although the only money earned by either of them from 1908, the date of marriage, until April, 1923, the date of creation of the Kammerdiner rotary jar joint tenancy business, was for his services as oil well driller and hers as boarding house operator. [R. 98, 109.]

For the purposes of this part of the argument we will assume that by the joint tenancy agreement of April, 1923, a partnership was formed. If it was a partnership, however, it was one in which the business and profits were not owned in moieties but by the partners and the survivor as joint tenants by the terms of the agreement as reduced to writing. We take it that there is no reason why partnership assets and profits may not be owned in joint tenancy in California. Section 2401(2) of the Civil Code provides:

> "Joint tenancy . . . does not *of itself* establish a partnership, whether such co-owners do or do not share any profits made by the use of the property;" (Italics supplied.)

Can it be doubted under that language that a joint tenancy partnership can be formed if that is the intent?

It is not uncommon in a partnership for the property of one of the partners to be used for partnership purposes

without becoming a part of the firm property and whether it does or not must be determined from the partnership agreement. *Perelli-Minetti v. Lawson,* 205 Cal. 642, 647.

In April, 1923, none of the patents had been issued and only one, the basic patent, had been applied for. Not a word is said about this patent or any patent in the agreement as later reduced to writing. The testimony shows that appellee did not consider that he had transferred any patent to the business partnership. When he was asked on cross-examination in reference to his wife's interest: "Now, that related to patents . . . did it not?", his answer was: "There was no way of transferring that to her." [R. 203.] This is not quoted as proof of the facts stated, but as appellee's opinion.

Furthermore, the business was operating successfully under the protection of the basic patent and many others before there was any written agreement whatever. There was, therefore, no written assignment of any of the patents, without which no title could pass under the federal law which governs on this point. *Owen v. Paramount Productions,* 41 F. Supp. 557; Title 35, U. S. C. A. Sec. 47, which provides: "Every patent or any interest therein shall be assignable in law by an instrument in writing, . . . ". Other properties could be assigned or transferred orally but not these patents.

Plaintiff (appellee) in paragraph XIII (b) of his complaint [R. 10] alleges:

> "That the Commissioner of Internal Revenue erred in including as an asset of said rotary jar business the patents issued to and owned by Plaintiff and

securing to him the sole right to manufacture said rotary jars."

Finding V (b) is [R. 59, 60]:

"That the Commissioner of Internal Revenue erred in including as an asset of said rotary jar business the patents issued to and owned by plaintiff and securing to him the sole right to manufacture said rotary jars."

We are not interested in whether a contrary finding by the Court could have been sustained. The finding was clearly based upon substantial testimony and therefore will not be disturbed by this Court. These patents therefore remained his property.

In this connection it is interesting to note that the Internal Revenue Agent in charge of the Los Angeles office of the Treasury Department in his report in regard to the income tax returns of Mr. and Mrs. Kammerdiner for the year 1928 [R. 269] says in regard to the written agreement of January 3, 1928 [R. 273]:

"The principal asset of the business is the patent which was obtained by the husband in 1923 and under the protection of which he manufactures the 'Rotary jar' which produces the income. *This patent has never been assigned by J. Kammerdiner and remains his separate property to continue to hold or to dispose of as he may see fit.*" (Italics supplied.)

In this connection see also *Anderson v. Carkins,* 34 L. Ed. 272.

II.

The Entire Capital Contributed to the Kammerdiner Rotary Jar Business Originally Belonged to Appellee and Any Property Contributed Thereto by Decedent Was Obtained by Her From Appellee Without the Payment Therefor of an Adequate or Any Consideration in Money or Money's Worth.

We have already shown that there was ample evidence to support the Court's finding that the patents were not assets of the Kammerdiner rotary jar business.

Appellant does not contend that the ultimate findings in regard to the wife's interest in the rotary jar business, finding V (d) [R. 60], are not sufficient to support the judgment, but contends [note page 3], that these ultimate findings are not supported by the evidence. He opens his argument on this point with two statements, neither of which is entirely correct. On page 18 he states that under the pertinent section of the Revenue Act "one-half of the value of the rotary jar business was *prima facie* includible in the wife's gross estate, because it was owned in joint tenancy" and on page 15 he says: "Exclusion of the amount from the gross estate can be secured only by a clear showing that no part of the business originally belonged to the wife." We find, however, that Regulations 80, Art. 23, printed in the appendix to his brief, page 3, provides: "The entire value of such property is *prima facie* a part of the decedent's gross estate.", and in *Foster v. Commissioner* (C. C. A. 9th), 90 F. (2d) 486 we find that under this presumption all of such joint tenancy property must be included in the gross estate of whichever joint tenant first dies in the absence of any

evidence to overcome the presumption. On the other hand, we are told in the Law of Federal Income Taxation by Jacob Mertens, Jr. (1943) Vol. 9, page 296, §50.71:

> "The presumption that the Commissioner's assessment of the tax is *prima facie* correct means no more than that, in the absence of evidence to the contrary, his action will be upheld, but, once there is such contrary evidence, this presumption vanishes and the case is wide open. This presumption is what is often termed a 'true' presumption and is not evidence itself, but merely shifts the burden of *going forward with,* as distinguished from the *actual burden of,* proof; and once the burden of *going forward with* the proof is met, it is as though the presumption had never existed."

This statement of the law is supported by *Wiget v. Becker* (C. C. A. 8th), 84 F. (2d) 706 and *J. M. Perry & Co., v. Commissioner* (C. C. A. 9th), 120 F. (2d) 123, in which case it is said on page 124:

> "The Commissioner cannot rely upon his determination as evidence of its correctness either directly or as affecting the burden of proof."

The Complaint alleges, paragraph I [R. 2], that decedent at the time of her death owned property in joint tenancy with plaintiff. The answer, paragraph I [R. 47] admits this, and the Court finds accordingly, finding I [R. 56]. Consequently, all of this joint tenancy property would be a part of her gross estate in the absence of testimony to the contrary. To meet this situation, the plaintiff testified [R. 98] that he had not to exceed about two hundred dollars ($200.00) at the time of marriage and his wife nothing, and that neither of them received any

property of any kind thereafter up to 1923 except his salary in drilling oil wells and the net income of the boarding house operated by his wife on a lease on which he was drilling wells, all of which was deposited in joint bank accounts and invested in other properties, and finally it or its proceeds furnished the capital for the Kammerdiner rotary jar business started in April, 1923, under an oral agreement and continued from January, 1928, to the date of decedent's death under the same agreement reduced to writing in January, 1928.

We start, then, with the presumption that the Commissioner's finding that one-half of the joint tenancy business was originally owned or contributed to the business by decedent is correct. This would necessitate a judgment for the Government if no evidence were produced. As soon, however, as it was shown that all of the money finally finding its way through joint bank accounts into the business was originally earned by the spouses after marriage in payment for their personal efforts, this evidence with the presumption contained in Section 164 of the Civil Code overcomes the presumption of correctness and in the language of *Wiget v. Becker, supra*, "the presumption is out of the case, and the issue is open."

This evidence also *prima facie* overcomes the presumption that the contributions to the joint tenancy business were originally the property of decedent. *In re Boody*, 113 Cal. 682. In that case it was held that the presumption is that property acquired during marriage

> "was community property, and this presumption could be overthrown only by evidence of a clear, certain and convincing character establishing the contrary; and the burden of this showing rested with the parties

> claiming the separate character of the property. In the absence of such proof, the presumption as to the community character of the property was absolute and conclusive. . . ."

To the same effect is *Fennell v. Drinkhouse,* 131 Cal. 447.

Such evidence not only overcame the burden of going forward, but conclusively established the original nature and ownership of the properties constituting the joint tenancy business, unless overcome by "evidence of a clear, certain, and convincing character establishing the contrary; and the burden of this showing rested with the parties claiming the separate character of the property."

Appellant claims that he has met this burden by certain evidence of appellee. He claims, on page 22 of his brief, that this evidence shows that an oral agreement at the time of marriage established a joint tenancy in all property thereafter acquired by either spouse, so that there never was a dollar of community property at any time. In this connection it will be noted that the Commissioner of Internal Revenue found directly to the contrary in his letter of November 10, 1937 [R. 17] sustaining a protest against the inclusion in the gross estate of certain items of joint tenancy property. The reason given by the Commissioner for sustaining the protest is as follows [R. 18]:

> "The evidence submitted indicated that the property represented by these items was purchased with community funds acquired prior to July, 1927, in which the wife had a mere expectancy and she made no contribution to the purchase of the jointly owned property."

We are not concerned with the sufficiency of the evidence to support a finding if it had been made by the Court, that there never was at any time any community property. The finding of the Court is directly to the contrary and must be sustained if supported by substantial evidence. This, we believe, is the law both federal and in the various states. Thus, in *Anderson v. Commissioner* (C. C. A. 9th), 78 F. (2d) 636 at 638, the Court says:

> "In the case of an express finding of the ultimate fact by the Board of Tax Appeals, the only question for the consideration of the reviewing Court is whether or not such a conclusion is supported by substantial evidence."

The same conclusion in *Estate of Schabiagne,* 47 Cal. App. (2d) 793, is expressed in these words on page 800:

> "It is not the province of this Court to weigh the evidence . . . and even should we be of the opinion that the finding should have been otherwise, unless there is a total absence of competent evidence to sustain the finding, we cannot reverse the trial court . . .
>
> "The question for this court is not how we would have determined the facts, but whether there is substantial evidence supporting the conclusion of the trial court."

In contending that the ultimate facts found by the Court are not sustained by the evidence, appellant refers to parts of the testimony of appellee from which he concludes that by agreement all property of the spouses was owned by them from the instant of marriage in joint tenancy with the right of survivorship and that therefore each of them

should be deemed to have originally owned one-half of the contribution to the Kammerdiner rotary jar business within the meaning of the Revenue Act.

It was for the Court, however, to determine the meaning of the evidence given by the witness and also the weight to accord it. In so doing, the Court noted particularly [R. 205] the kind of English spoken by the witness and doubted if he could understand half of the words the lawyer uses, unless they were explained to him in words of one syllable, and says: "He is a man of little schooling."

The witness was asked [R. 265] if in 1923 or 1928 he knew the difference between community property, joint tenancy property, partnership, partnership property, or other property, and replied: "After all the wrestling I have gone through, I don't know the difference today." He testified [R. 260] that there was no understanding with his wife about 1923 that if they made any money they would divide it. The wife's affidavit to petition relative to income tax return states [R. 256] that her understanding was that the spouses "were in partnership in the patent rotary jar business as in everything else since marriage." In a similar affidavit by the husband he states [R. 255]: "His wife has acted as his partner in his business *as well as in his home.*" (Italics supplied.)

The witness, when asked what he meant when he said he and his wife "formed a partnership," [R. 216] replied: "Well, I think any married couple that are married and married right have got a partnership right off the bat." Also, he testified in regard to the so-called partnership [R. 206, 207] that there was no agreement to divide profits and losses. When asked [R. 200] if the partner-

ship or joint tenancy agreement was entered into at date of marriage, he replied: "We didn't think so much of it until the jar business came along." Also, when asked if the agreement wasn't made in 1928, he replied: "We made that agreement at the start of the jar business, '23." When asked [R. 201] if he and his wife always considered that they owned their profits "50-50", he replied: "Well, that is the only thing we figured out, but it was lined up after we got the jar business . . ." He testified [R. 201] that the savings from his salary and the earnings from the boarding house all went into one joint account.

There is no need of multiplying excerpts from the testimony. It seems clear that the Court could reasonably conclude from all the testimony that taxpayer and his wife were a couple loyal to each other who felt that the marital property should be owned by both and the survivor. That he worked for a salary and she operated a boarding house and they deposited all savings in a joint bank account out of which they later financed the Kammerdiner rotary jar business in 1923 in which they both worked. The profits from this business were large and they were faced with income tax problems. They felt that under the marital partnership, as they understood it, they should each be allowed to return one-half of the net income for income tax purposes and did file separate returns for several years prior to 1928. They endeavored without success to convince the taxing authorities that they constituted a partnership and should be allowed to file separate returns. The Government refused to recognize any partnership unless and until they had a written partnership agreement. During all of this time they had not employed

lawyers to advise them or prepare their returns. Finally, on January 3, 1928, they executed a written so-called partnership agreement which, according to the testimony, simply reduced their oral agreement of 1923 to writing, not changing the agreement one iota, and this agreement continued until the wife's death. That is what the Court did find. When taxpayer and his wife refer to a partnership existing prior to April, 1923, they clearly mean a partnership by virtue of being married, the kind of partnership referred to in *Ord v. De La Guerra* (1861), 18 Cal. 67 at 74; and *Lynam v. Vorwerk* (1910), 13 Cal. App. 507 at 509. In the first case the Court in speaking of the husband's ownership of the community property after his wife's death, says: "The husband holds really as survivor of this matrimonial copartnership . . .". In the other, the statement is: "The relation of husband and wife as to their property is somewhat in the nature of a partnership, where there is usually partnership property and the separate property of the copartners." The Court calls the community property "partnership property."

The ultimate facts, therefore, amply supported by the evidence, upon which the judgment was based, were that at the time of decedent's death she owned the joint tenancy business in joint tenancy with her husband, appellee herein, and that the contributions to said business originally belonged to appellee and no part thereof was ever acquired by decedent from appellee for an adequate consideration in money or money's worth. The Court in its minute order, as hereinbefore, and on page 23 of appellant's brief stated, found that the written joint tenancy agreement of 1928 simply confirmed the oral agreement of 1923, in other words, that the joint tenancy agreement

in effect at the date of decedent's death was not first created in 1928 but was created in 1923 and existed from that time until decedent's death, part of the time under the oral agreement and the balance of the time under the written agreement, executed because [R. 202] the taxing authorities would not recognize the oral agreement and permit them to split the income tax.

The crucial finding is finding VI [R. 60, 61]. The finding is not that the joint tenancy business in effect at the date of decedent's death was created in 1928 but that it was "referred to in said agreement of January 3, 1928." In other words, they were conducting a business and for the reasons hereinbefore stated made a written statement in regard thereto on January 3, 1928. This is in accordance with the written statement itself. The statement [R. 44] is in regard to "the business . . . heretofore conducted by them," and the statement is that it "is now and all increase or change thereof shall be, their joint property with right of survivorship."

It was not necessary for the Court to find the evidentiary facts, including the date of the creation of the joint tenancy business existing at the decedent's death, or what funds *immediately* created said joint tenancy business. It is, as suggested in the note on page 3 of appellant's brief, for this Court to decide whether "the District Court's ultimate findings crumble when the evidentiary facts are considered." What does the evidence show? That the written agreement of January 3, 1928, reduced to writing,

without changing, the oral agreement of April, 1923. That the funds going into the joint tenancy business created in 1923 and referred to in the written agreement of 1928, were taken from the joint account of the spouses, made up entirely of their earnings since marriage, for their personal services.

The taxing statute set out on pages 1 and 2 of the appendix to appellant's brief clearly excepts from the tax the part of the joint tenancy property *originally* belonging to the survivor. If this means belonging to the survivor *immediately before* being invested in the joint tenancy under consideration, then the survivor could never be taxed where the funds invested are taken from a joint bank account of the joint tenants because the *entire* joint bank account belongs to *each* joint depositor and the survivor, regardless of who originally owned the funds constituting the joint account, and remains the property of the survivor, who takes nothing from the deceased joint tenant. This has always been the common law and the law of California. *Hannon v. Southern Pacific R. R. Co.*, 12 Cal. App. 350, 355; *Estate of Gurnsey,* 177 Cal. 211, 216; *Siberell v. Siberell,* 214 Cal. 767, 769. The statute therefore does not provide for a tax on the part of the joint tenancy property which before going into joint tenancy was *originally* owned by the survivor. This idea is expressed in Treasury Regulations 80, Art. 23, set out on page 3 of the appendix to appellant's brief as follows:

> "But it is not the intent of the statute that there should be so included a greater part or proportion

> thereof than is represented by an outlay of funds, which, *in the first instance,* were decedent's own . . . " (Italics supplied.)

In the argument so far it is not contended that the spouses cannot enter into a valid agreement that the earnings of each shall be his or her separate property. *Helvering v. Hickman* (C. C. A. 9th), 70 F. (2d) 985. We respectfully submit, however, that the facts in the instant matter are more nearly akin to those in *Blair v. Roth* (C. C. A. 9th), 22 F. (2d) 932, and *Belcher v. Lucas* (C. C. A. 9th), 39 F. (2d) 74, in both of which it was held that the earnings of both spouses "became community property before the agreement became effective." In *Helvering v. Hickman,* on page 988, both of these cases are distinguished for the reason that:

> "In neither case was there a clear-cut agreement that the wife should have her own earnings as her separate property; in both cases there was a partnership agreement by which the earnings of both were joined in one fund to pay expenses of both and remainder only was to be owned equally."

In the instant matter there is no evidence whatever that there was ever at any time any agreement that the wife's earnings should be her separate property. Their earnings always went into a joint tenancy out of which all business and living expenses were paid and the balance owned as joint tenants.

III.

Decedent Did Not Purchase Her Interest in the Kammerdiner Rotary Jar Business.

Appellant argues that she did. He states on page 31 of his brief:

> "But the wife also paid consideration in money's worth in the form of services for her interest in the business."

The argument is that they agreed in effect that she should acquire an interest in the partnership as payment for her agreed services. It is conceded that the spouses could by clear language agree that the wife should be paid for services of the kind performed by her. It is also conceded that the spouses could legally form a business partnership. Section 158, Civil Code. It is important to bear in mind, however, that no contribution or consideration, in money or money's worth or services, is necessary to acquire an interest in such a partnership, whether the income is to be divided or owned in joint tenancy. Thus, in *Wilson v. Commissioner,* 11 B. T. A. 963, involving income taxes of the members of a family partnership consisting of three husbands and their wives, it was held that each one of the six owned one-sixth of the income and should pay the tax thereon. In so holding, the Board on page 970 says:

> "The respondent, however, contends that since the wives contributed neither money nor services, they never became members of the partnership."

The answer by the Board to this contention on page 971 was:

> "Inasmuch as the Civil Code of California contains no provision whereby it is essential to the formation of a valid partnership that the members contribute any money or services . . . we do not think that the respondent's contention is well taken."

In a partnership between the spouses it will not be presumed that either is to be paid for his or her services in the absence of a clear-cut agreement to that effect or that the services of either is to constitute a consideration for an interest in the partnership where no consideration is necessary. Furthermore, all community expenses of the family including two daughters [R. 475] were to be paid out of the partnership funds, the partnership consisting of the business as well as the home. [R. 238.] It does not appear that the wife rendered any more service than if she had confined her attention to her home. They simply deemed it advisable for her to perform a different kind of service and hire domestic help [R. 474], one servant all the time and extra help, laundress, woman that came in to do cleaning, etc. One servant was paid $80.00 per month and the others were paid by the hour, totaling well over one hundred dollars ($100.00) per month. What woman would not prefer to perform the services performed for the partnership by the wife rather than to do all the ordinary housework, cleaning and laundry?

Furthermore, it does not appear that the services of a woman capable of performing the services performed by decedent for the business could not have been secured for less than the amounts paid to the said servant, cleaning woman and laundress.

That the parties did not understand that the wife's interest in the business was in return for her services is shown by appellee's testimony. [R. 253.] In answer to a direct question he replied: "Well, that sounds kind of odd to me because I don't know why either her or I would put that out." And when asked the further question: "You question that now?", he replied: "I would."

IV.

There Is No Inconsistency in the Evidence Offered and the Decision Rendered in the Income Tax Matters, Kammerdiner v. Commissioner, 25 B. T. A. 495, and the Evidence Offered and Decision Rendered in the Instant Matter.

Appellant's contention on this point is contained in the second paragraph on page 17 of his brief and reads as follows:

> "The conclusion of the District Court that the rotary jar business was old-type community property prior to January 3, 1928, cannot stand, because the Board of Tax Appeals in a prior decision which was *res judicata* had decided that the business was not community property during 1925, 1926 and 1927, by virtue of an oral agreement in 1923 creating a partnership."

As hereinbefore stated, the District Court reached no such conclusion. The conclusion of the Court is expressed in its minute order [R. 54] to the effect that the joint tenancy created in 1928 confirmed "the *oral* agreement of 1923." (Italics supplied.) In other words, the *written* agreement of 1928 continued the *oral* agreement of 1923. The pertinent finding expresses the conclusion even more clearly. It is finding VI. [R. 60.] The finding is

not that the business in which decedent owned an interest as joint tenant at the time of her death was created in 1928. The finding is that it was "referred to in said agreement of January 3, 1928." This very clearly indicates a business in existence prior to the 1928 agreement which refers to it. In this connection it will be noted that the written agreement or statement [R. 44] is in regard to the ownership of the *spouses* in the business "heretofore conducted by them."

It will tend to clarify the situation with reference to both suits to first consider the income tax returns for 1928. Each spouse returned one-half of the income as a member of a partnership. [R. 417.] In a letter of May 15, 1930 [R. 269] the Internal Revenue Agent in charge of the Los Angeles office of the Treasury Department proposed adjustments based on the report of an examining agent [R. 27] that the written agreement of January 3, 1928, was not a partnership agreement but "in fact is a joint tenancy agreement." The taxpayer in his protest stated [R. 281] that the agent was "perfectly correct in denominating it a joint tenancy agreement." He contended, however, that as joint tenants the spouses had a right to each return one-half of the income. This contention was conceded to be correct in the letter of the Internal Revenue Agent in charge bearing date of April 22, 1931. [R. 285, 286.] It will be noted that this ruling by the taxing authorities was based squarely on the written agreement of January 3, 1928, a copy of which was in the hands of the Government, and that the final determination in said matter was made prior to the trial in the Board of Tax Appeals involving the income taxes for the years 1925, 1926 and 1927, the returns for which were

prepared as partnership returns by a person not an attorney. [R. 294, 452.] The fact that the return was prepared by a person other than an attorney will be given consideration by the Court. *Dollar v. Commissioner,* 41 B. T. A. 869, 875.

The trial before the Board began on June 10, 1931. The testimony [R. 453, 454, 455, 456] was to the effect that the taxing authorities would not recognize the oral partnership agreement of April, 1923, unless and until it was reduced to writing; that it was reduced to writing on January 3, 1928, and under it the spouses were permitted to divide the income in their returns for the year 1928; that the written agreement did not change the agreement of April, 1923. As hereinbefore stated, a copy of the written agreement was then in the possession of the Government. Neither side offered said written agreement in evidence.

The opinion, 25 B. T. A. 495, states: "The only issue is whether the petitioner and his wife were equal partners in a certain business throughout the taxable years." Held that they were; that the capital required for the business was drawn from their joint bank account in which had been deposited the savings from the husband's salary over the years since marriage and from the boarding house; and that the receipts of the business were deposited in this account. That the partners were "to share equally in the profits or losses therefrom." The Board on page 497 says:

> "In this proceeding it is perfectly clear that the petitioner and his wife joined together in April of 1923 to carry on a business enterprise for their mutual benefit. This is sufficient to establish a partnership."

There is no specific finding as to how the partners were "to share equally in the profits or losses." That is, whether the profits were to be divided each one taking a share and paying out of said share one-half of the losses, or whether they were to "share equally in the profits" in excess of the losses by taking and keeping them in joint tenancy. However, if all bills were payable out of the joint account and the receipts of the business to be deposited therein, they necessarily owned them as joint tenants. It was not necessary in said matter to find whether the income was to be divided or to go into the joint bank account which would be owned by them equally as joint tenants. In either case the income would be divided for income tax purposes. There is clearly no finding of a partnership, joint tenancy or otherwise or of separate property prior to the rotary jar business. The finding is:

> "*After the usefulness of such device had been proved by successful tests* he formed a partnership with his wife." (Italics supplied.)

In the instant matter, however, the Court having found the existence of the joint tenancy at the date of death, it was necessary for estate tax purposes to find as to the *original* ownership of the funds belonging to the joint tenants; that is, who owned them before they were deposited in the joint bank account out of which the joint tenancy partnership business was financed. The taxpayer relied on precisely the same written and oral agreement in each case and the decisions in the two cases are not at all inconsistent.

V.

Taxpayer Will Not Be Penalized Because He Erroneously Returned and Paid a Tax.

On page 24 of his brief appellant points out that if appellee's contention is correct no estate tax should have been paid in this matter as the joint tenancy properties returned, one-half of which were included in the gross estate on which the tax was computed were either held in joint tenancy prior to the 1923 agreement or were purchased with the profits of said business. This is conceded. Why they were thus returned we can only surmise, as taxpayer was then represented by other counsel. It seems probable that they were included on the supposition that one-half of joint tenancy property was taxable regardless of its ownership before going into joint tenancy, overlooking the statute making its inclusion dependent on its source. The joint tenancy assets of the business are mentioned but valued at nil, on the theory that the patents were not assets of the business but were the property of appellee. The tax erroneously returned and paid was $4,-332.27 [R. 21], while the deficiency finally determined [R. 46] was $22,090.65. Is it astonishing that with the employment of different counsel in relation to the deficiency and the contest over $22,090.65, the erroneous payment of $4,332.27, was not earlier discovered?

The fact that it was erroneously returned and the tax paid cannot be taken as an admission that it was not originally community property. *Dollar v. Commissioner*, 41 B. T. A. 869, 875.

Furthermore, as hereinbefore shown, it was the basic patent, shutting off competition, that enabled the business to earn the enormous profits represented by the joint ten-

ancy properties returned in Form 706. Therefore, if by any chance it should be held that the patents were part of the assets of the business and that the value of decedent's services over and above the amount paid by the business for home servants, cleaners and laundresses, was to that extent a consideration for her interest in the business, the proportionate part of the value of the business and its profits allocable to such excess services, if any, would be so slight that the estate tax was nevertheless far overpaid by the payment of said $4,332.27 so that there would be no deficiency. This is true regardless of whether the patents were separate or community property, for if it should be determined that all of the patents were originally community property, the only thing of value protected by them was the exclusive use of the rotary jar, a product of appellee's brain, invented prior to 1923, and therefore community property acquired prior to July 29, 1927, and, as stated on page 19 of appellant's brief, owned entirely by the husband [appellee], in which decedent had a mere expectancy contingent on her surviving him.

Conclusion.

The judgment is supported by the ultimate facts found which in turn are supported by ample evidence. The judgment should therefore be affirmed.

Respectfully submitted,

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No. 10359

United States
Circuit Court of Appeals
For the Ninth Circuit.

FLOTATION SYSTEMS, INC., a corporation, and UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation,

Appellants,

vs.

UNITED STATES for use of ANDREW POLLIA, T. G. SHANNON and B. W. MACKIE, co-partners doing business under the fictitious name and style of Shanmac Co.,

Appellees.

Transcript of Record

Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division

FILED
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Appellants,

vs.

UNITED STATES for use of ANDREW POLLIA, T. G. SHANNON and B. W. MACKIE, co-partners doing business under the fictitious name and style of Shanmac Co.,

Appellees.

Transcript of Record

Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division

ROTARY COLORPRINT, 590 FOLSOM ST., SAN FRANCISCO

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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San Francisco, California

Attorneys for Plaintiffs in Intervention and Appellees.

District Court of the United States for the Northern District of California, Southern Division

Civil Action File No. 21905W

UNITED STATES for use of ANDREW POLLIA, Plaintiff,

vs.

FLOTATION SYSTEMS, INC., a corporation, UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation, FIRST DOE COMPANY, a corporation, SECOND DOE, THIRD DOE, FOURTH DOE, Defendants.

COMPLAINT—BREACH OF CONTRACT

Plaintiff complains of defendants and for cause of action alleges:

I

That defendant Flotation Systems, Inc., a corporation, is a corporation duly and regularly licensed to transact business in the State of California.

II

That defendant United States Fidelity and Guaranty Company, a corporation, is a corporation organized and existing under and by virtue of the laws of the State of Maryland, and duly and regularly licensed to transact business in the State of California. [1*]

*Page numbering appearing at foot of page of original certified Transcript of Record.

III

That on or about the 22nd day of January, 1940, the defendant Flotation Systems, Inc., a corporation, was awarded a contract by the United States of America, more particularly identified and known as NYO #3850, Navy Department of the United States of America, for the installation of the gasoline storage and distribution system at the Naval Air Station, located in the City of Alameda, County of Alameda, State of California.

IV

That on or about the 22nd day of January, 1940, the defendant Flotation Systems, Inc., a corporation, as principal, and the defendant United States Fidelity and Guaranty Company, a corporation, as surety, pursuant to its corporate powers and license, executed and delivered to the Navy Department of the United States of America, a certain Security Bond, in the penal sum of One Hundred Seventy-five Thousand Dollars ($175,000.00), guaranteeing the faithful performance by the defendant Flotation Systems, Inc., a corporation, of said contract, in the payment of all claims of laborers and material men and sub-contractors, engaged by the defendant Flotation Systems, Inc., a corporation, in the performance of said contract.

V

That on or about the 28th day of May, 1940, the defendant Flotation Systems, Inc., a corporation en-

tered into a certain sub-contract with Andrew Pollia, whereby and wherein it was agreed that the said Andrew Pollia was to install the gasoline and water storage and distribution systems in said Naval Air Station, all of which work was a part of the work described in the contract between said defendant Flotation Systems, Inc., a corporation, and the United States of America, as hereinabove alleged; that subsequent to said 28th day of May, 1940, and in addition to the services and work covered by said sub-contract and upon the [2] express request of defendant Flotation Systems, Inc., a corporation, and in accordance with extra work orders issued by said defendant Flotation Systems, Inc., a corporation, Andrew Pollia performed extra services and work and delivered material in regard thereto, and in the installation of fittings inside of gasoline pits, patching and wrapping pipe lines and installations in the water control pits; that the reasonable value of the materials supplied by and services performed by said Andrew Pollia was and is in the total sum of Twenty-six Thousand, Nine Hundred Eight and 70/100 Dollars ($26,908.70).

VI

That all of said services and work done by the said Andrew Pollia has been completed according to plans and specifications and in good workman like order; that defendant Flotation Systems, Inc., a corporation, has paid Andrew Pollia on account of said services and work, the amount of Seventeen

Thousand, One Hundred Ninety-one and 49/100 Dollars ($17,191.49); that Andrew Pollia has not been paid in full therefore; that more than Ninety (90) days has elapsed after the day on which the last of the labor was done or performed or material furnished or supplied; that the balance thereof, unpaid at the institution of this suit, is the sum of Nine Thousand Seven Hundred Seventeen and 21/100 Dollars ($9,717.21).

VII

That the true names of defendants sued herein as First Doe Company, a corporation, Second Doe, Third Doe, Fourth Doe, are not known to plaintiff at this time and plaintiff prays that when their true names are ascertained the same may be inserted herein in lieu of said fictitious names.

Wherefore, plaintiff prays for judgment against defendants and each of them, in the sum of Nine Thousand Seven Hundred Seventeen and 21/100 Dollars ($9,717.21), for costs of suit, [3] and for such other and further relief as may seem just in the premises.

J. J. DOYLE,
Attorney for Plaintiff.

State of California,
City and County of San Francisco—ss.

Andrew Pollia, being first duly sworn, deposes and says:

That he is the plaintiff in the above entitled

action; that he has read the foregoing Complaint and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated upon information or belief and as to those matters that he believes it to be true.

ANDREW POLLIA.

Subscribed and sworn to before me this 21st day of June, 1941.

[Seal] EMMA L. MacHUGH,

Notary Public in and for the City and County of San Francisco, State of California.

My Commission Expires January 15, 1944.

[Endorsed]: Filed June 21, 1941. [4]

[Title of District Court and Cause.]

BILL OF PARTICULARS

Re: Gasoline Storage and Distribution System, Naval Air Station, Alameda, California. Spec. #9505.

	Contract Price	$16,040.00
Extra—Wrapping joints & fittings as per agreement		663.60
"	Welding joints	195.90
"	Rental of crane $8.00 per hr.	164.00
"	Rental of crane $8.00 per hr.	404.00
"	Patch pipe wrapping—July & Aug.	1,760.00
"	Patch pipe wrapping—Sept.	385.00
"	Wrapping pipe	36.00

"	Distributing Gasoline & Water Piping	375.00
"	Installing temporary water line for testing	275.00
"	Making test caps	48.00
"	Cutting and fitting water pipe	250.00
"	Use of Civil Engineer	25.00
"	Order #1215	241.00
"	Order #273	770.00
"	Order #280	165.00
"	Order #1207	208.00
"	Letter dated Aug. 23, 1940	4,903.20
		$26,908.70

[5]

Credits

Payment #1	$ 7,600.00	
" #2	4,737.49	
Payroll advanced	1,544.00	
On account of payment due 9-10-40	1,000.00	
Omissions for tile drain	2,300.00	
	$17,191.49	$17,191.49
Balance due		9,717.21

Dated: July 31, 1941.

J. J. DOYLE,

Attorney for Plaintiff.

(Receipt of Service.)

[Endorsed]: Filed Aug. 1, 1941. [6]

[Title of District Court and Cause.]

ANSWER OF FLOTATION SYSTEMS, INC., AND UNITED STATES FIDELITY AND GUARANTY CO.

Now come the defendants, Flotation Systems, Inc., and United States Fidelity and Guaranty Co., and for answer to the complaint of plaintiff on file herein, admit, deny and allege as follows:

I

Admit all the allegations contained in Paragraph I, II, III, and IV of Plaintiff's complaint.

II

Admit that on the 28th day of May, 1940, plaintiff and defendant Flotation Systems, Inc., entered into a sub-contract, and in this connection said defendant alleges that a copy of said contract is hereto attached, marked Exhibit "A", and by this reference made a part hereof for all purposes.

III

Answering that part of Paragraph V, wherein it is alleged [7] that plaintiff performed certain extra work and services and delivered materials in regard to work to be done in the installation of fittings inside of gasoline pits, said defendant denies that the work of installation of fitting inside of the gasoline pits, wrapping and patching pipe lines and installations in the water control pits is or ever was extra work. In this connection, de-

fendant alleges that said work was specified in the plans and specifications and in the contract entered into by defendant and plaintiff; and defendant further alleges that no order of any kind or character for the doing of this work was ever by the defendant Flotation Systems, Inc., given to plaintiff, but that plaintiff performed said work by reason of the fact that it was contained in his subcontract and in the plans and specifications.

Denies that the reasonable value of the materials supplied and work performed by plaintiff was and is the sum of Twenty-six Thousand Nine Hundred Eight and 68/100 ($26,908.68), or any other sum in excess of the sum of Eighteen Thousand Seven Hundred Thirty-nine and 68/100 ($18,739.68); and in this connection said defendant alleges that the sum of Eighteen Thousand Seven Hundred Thirty-nine and 68/100 ($18,739.68) was the agreed price by and between plaintiff and this defendant for the doing of said work and the furnishing of said materials under and pursuant to the terms of the contract, and the extra work and materials agreed upon and authorized by order therefore.

IV

Answering Paragraph VI, denies that plaintiff completed all of the work according to the plans and specifications, and in this connection said defendant alleges that there was an omission from the plans and specifications and in the contract of the installation of the tile drain in the amount of Twenty-three Hundred Dollars ($2,300.00); that

in addition thereto plaintiff failed to do certain work and to purchase certain materials, and defendant Flotation Systems, Inc., was compelled to and did purchase said materials, and was compelled to and did complete said work; that [8] the amount thereof is the sum of Seven Hundred Five and 72/100 Dollars ($705.72); that a list thereof is hereto attached; marked Exhibit "B", and by this reference made a part hereof for all purposes.

V

Denies that plaintiff has not been paid any moneys in excess of Seventeen Thousand One Hundred Ninety-one and 49/100 Dollars ($17,191.49); and in this connection said defendant alleges that plaintiff has been paid the sum of Seventeen Thousand Two Hundred Seventy-two and 04/100 Dollars ($17,272.04).

VI

Denies that there is now due, owing and unpaid to plaintiff the sum of Nine Thousand Seven Hundred Seventeen and 21/100 Dollars ($9,717.21) or any other sum, or at all; and in this connection said defendant alleges that plaintiff contracted certain labor and materials bills in the doing of the work under and pursuant to said contract, and that said labor and materials bills have not been paid by plaintiff to the parties entitled thereto, and that said parties have served notice upon defendant of the nonpayment of said bills and demanded that the amount thereof be withheld by defendant and paid to the prospective parties;

that said bills amount to the sum of One Thousand Seven Hundred Ninety-one and 20/100 Dollars ($1,-791.20); that a list thereof is hereto attached, marked Exhibit "C" and by this reference made a part hereof for all purposes.

Wherefore defendant prays that plaintiff take nothing by his actions, but that it be hence dismissed with its costs.

JOHN D. HARLOE,
Attorney for Defendant. [9]

State of California,
City and County of San Francisco—ss.

John D. Harloe, being first duly sworn, deposes and says:

I am the Attorney for Flotation Systems, Inc., and he makes this verification for and on behalf of said Flotation Systems, Inc., by reason of the fact that said defendant is absent from the City and County of San Francisco, the County wherein your affiant has his office, and that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated on information or belief, and as to such matters that he believes it to be true.

JOHN D. HARLOE.

Subscribed and sworn to before me this 8th day of August, 1941.

(Seal) MARK E. LEVY,
Notary Public in and for the City and County of San Francisco, State of California. [10]

EXHIBIT "A"

May 28, 1940.

Re: Gasoline Storage and Distribution and Distribution System Naval Air Station, Alameda, Calif. Specification No. 9505.

Flotation Systems, Inc.,
4031 Goodwin Avenue
Los Angeles, California

Gentlemen:

For the sum of Sixteen Thousand and Forty Dollars ($16,040.00), I propose to furnish the following labor and material, all in strict accordance with the Bureau of Yards and Docks Specification 9505.

Item 1: Complete installation of all gasoline pipe line as covered by plans accompanying Spec. 9505, including necessary excavation, backfill, replacement of red rock, surfacing, repairs to any existing roads, welding, and testing all joints, and all connections to Pit Boxes A (1), B (1), C-2 (2), D, (8), and E (16). It is understood that Flotation Systems, Inc. will furnish all necessary pipe and fittings, and I will furnish all welding materials and equipment.

Item 2: Complete installation of all Cast Iron U. S. Joint Water lines as covered by plans accompanying Spec. 9505, including necessary excavation, backfill, replacement of red rock surfacing, repairs to any existing roads, connection and

testing of all joints, and all connections to Pit Boxes A (1), B (1), C-2 (2), D (8), and E (16). It is understood that Flotation Systems, Inc., will furnish all pipe, fittings, follower rings, and gaskets, and that I will furnish the 10″ rock base under the pipe lines in the trench.

Item 3: Complete Installation of a 12″ terra-cotta drain pipe, to be installed in lieu of the 8″ drain line as covered by the plans accompanying Spec. 9505, and including necessary excavation, backfill, replacement of red rock, surfacing, repairs to any existing roads, connection of joints, and all connections to Pit Boxes C-2 (2) and D (8). It is understood that I will furnish the 12″ terra-cotta pipe, all fittings required, and the 10″ rock fill under pipe in trenches. It is further understood that in the event any excavating below a depth of six feet is required on this line, I will receive $1.60 per cubic yard of excavation done below this depth, in addition to the amount stipulated above.

Item 4: Painting of all piping installed by us inside of pit boxes A, B, C, D, and E.

I agree to wrap all joints and fittings installed under Item 1 above, for the following prices, to be paid in addition to the amount stipulated above:

6″ joints and fittings @.....$2.10 each
5″ joints and fittings @..... 1.70 each
4″ joints and fittings @..... 1.40 each
3″ joints and fittings @..... 1.10 each

[11]

I agree to begin work within three days (holi-

days excluded) after acceptance of this agreement, and to complete all work after acceptance of this agreement and to complete all work covered by this agreement, within forty-five (45) days after acceptance of this agreement; and that in the event of my failure to do so, Flotation Systems, Inc., will have the right to proceed with the work and charge the cost of completing same against the amount stipulated in this agreement.

Terms are to be payments monthly on the basis of 90% of the work completed, and the balance of 10% to be paid upon completion of work.

Respectfully yours,

ANDREW A. POLLIA.

Accepted by

EUGENE CERIAT.

Date 5-28-40. [12]

EXHIBIT "B"

20 Hose Reels, cost of installation	$ 150.00
50# lead purchased June 29, 1940 @ 0.04/lb.	2.00
Moving rock at Boat House with Bigge Crane, July 10:	
Crane, 2 hours, at 6.00	12.00
Crane oper. 2 hours, at 1.67	3.33
Crane oiler 2 hours, at 1.17	2.33
Total	17.66
Moving rock at Boat House with Western Crane, Aug. 19:	
Crane, 2 hours, at 6.00	12.00
Crane Oper. 2 hours, at 1.67	3.33
Crane oiler, 2 hours, at 1.16	2.33
Total	17.66

Lumber purchased July 11, E. E. Wood Lbr. Co. and charged to Flotation Systems	4.26
Ditto, purchased July 1	62.29
Ditto, purchased June 26	39.35
Telephone Call, Alameda to L. A. August 10	2.25
Telephone Call, L. A. to Alameda, Sept. 4	2.45
Ditto on Sept. 10, 1940	2.25
Ditto on Sept. 13, 1940	2.25
Load of Red Rock, Sept. 3, 7 yeard at 1.00	7.21
Cost of completing and testing work for which we were billed (above) including labor and equipment rental (see itemization)	445.89
Estimated cost of replacing and repairing tools and equipment borrowed and lost or damaged by employees of Pollia	100.00
Total	705.72

[13]

EXHIBIT "C"

A. R. Reed Co	$ 487.52
Western Crane Co	44.15
Thomas Welding Co	182.50
E. K. Wood Lumber Co	4.82
J. Catucci	746.59
Total	$1,365.58

(Receipt of Service.)

[Endorsed]: Filed Aug. 8, 1941. [14]

[Title of Court and Cause.]

ORDER GRANTING MOTION TO INTERVENE

The motion of T. G. Shannon and B. W. Mackie, copartners, doing business under the fictitious name and style of Shanmac Co., to intervene in the above entitled action under Title 40 U. S. C. A. Sec. 24a.c. Federal Rules of Civil Procedure, and notice having come on regularly for hearing this day, and it being represented by counsel for said plaintiffs in intervention that the defendants in intervention above named consent to the making of an order granting leave to intervene as prayed in said motion;

Now Therefore, it is ordered that the motion of said plaintiffs in intervention to intervene herein be and it hereby is granted and plaintiffs in intervention be and they hereby are granted leave to file their complaint in intervention and thereafter appear in said action as plaintiffs in intervention in such manner as they may be advised.

Dated September 29th, 1941.

MARTIN I. WELSH,
United States District Judge.

[Endorsed]: Filed Sep. 29, 1941. [15]

In the Southern Division of the United States District Court for the Northern District of California.

Civil Action File Number 21905W

UNITED STATES for use of ANDREW POLLIA, Plaintiff,

vs.

FLOTATION SYSTEMS, INC., a corporation, UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation, FIRST DOE COMPANY, a corporation, SECOND DOE, THIRD DOE and FOURTH DOE, Defendants.

T. G. SHANNON and B. W. MACKIE, copartners doing business under the fictitious name and style of SHANMAC CO., Plaintiffs in Intervention,

vs.

ANDREW POLLIA, FLOTATION SYSTEMS, INC., a corporation, UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation, FIRST DOE COMPANY, a corporation, SECOND DOE, THIRD DOE and FOURTH DOE, Defendants in Intervention.

COMPLAINT IN INTERVENTION UNDER TITLE 40 U.S.C.A., SEC. 24a.c. FEDERAL RULES OF CIVIL PROCEDURE.

[16]

Now come plaintiffs in intervention above named and after leave of court first had and obtained, file this, their Complaint in Intervention and for cause of action against defendants in intervention, allege as follows, to wit:

I.

That defendant in intervention Flotation Systems, Inc., a corporation, is a corporation duly and regularly licensed to transact business in the State of California.

II.

That defendant in intervention United States Fidelity and Guaranty Company, a corporation, is a corporation organized and existing under and by virtue of the laws of the state of Maryland and is duly and regularly licensed to transact business in the state of California.

III.

That on or about the 22nd day of January, 1940, the defendant in intervention, Flotation Systems, Inc., a corporation, was awarded a contract by the United States of America, more particularly identified and known as NYO #3850, Navy Department of the United States of America, for the installation of a gasoline storage and distribution system at the naval Air Station located in the city of Alameda, county of Alameda, state of California.

IV.

That on or about the 22nd day of January, 1940, the defendant in intervention Flotation Systems, Inc., a corporation, as principal and defendant in intervention United States Fidelity and Guaranty Company, a corporation, as surety, pursuant to its corporate powers and license, executed and delivered to the Navy Department of the United States of America a certain Security Bond in the penal sum of One Hundred Seventy-Five Thousand Dollars ($175,000.00), guaranteeing the faithful [17] performance by the defendant in intervention Flotation Systems, Inc., a corporation, of said contract, in the payment of all claims of laborers and material men and sub-contractors engaged by Flotation Systems, Inc., a corporation, in performance of said contract.

V.

That on or about the 28th day of May, 1940, the defendant in intervention Flotation Systems, Inc., a corporation, entered into a certain sub-contract with defendant in intervention Andrew Pollia whereby and wherein it was agreed that the said Andrew Pollia was to install the gasoline and water storage and distribution system in said Naval Air Station all of which work was a part of the work described in the contract between said defendant in intervention Flotation Systems, Inc., a corporation, and the United States of America as hereinabove alleged.

VI.

That subsequent to said 28th day of May, 1940, and in addition to the service and work covered by said contract and upon the express request of defendant in intervention Flotation Systems, Inc., a corporation and in accordance with work orders issued by said defendant in intervention Flotation Systems, Inc., a corporation, defendant in intervention Andrew Pollia performed extra services and work of an extent and for a consideration unknown to plaintiffs in intervention.

VII.

Plaintiffs in intervention further allege that in the performance of the said sub-contract hereinabove referred to and in the performance of the extra work and services hereinabove referred to, defendant in intervention Andrew Pollia, with the express knowledge and consent of defendant in intervention Flotation Systems, Inc., a corporation, hired and took from [18] plaintiffs in intervention, for use in the performance of said work, two certain Northwest Power Draglines and Cranes at an agreed rental therefor of Seven Dollars ($7.00) per hour plus a payment of overtime to the operator thereof.

VIII.

That for said taking, hiring and use of said Northwest Power Draglines and Cranes, defendants in intervention became indebted to the plaintiffs in intervention in the sum of Four Thousand

Six Hundred Fifty-Two Dollars and ninety-five cents ($4,652.95), no part of which has been paid save and except the sum of Three Thousand Six Hundred Four Dollars and twenty-two cents ($3,-604.22) and there is now due, owing and unpaid from defendants in intervention to plaintiffs in intervention, the sum of One Thousand Forty-Eight Dollars and seventy-three cents ($1,048.73) which sum, though demanded, said defendants in intervention and each of them fail, refuse and neglect to pay.

IX.

That prior to the bringing of this action, plaintiffs in intervention herein prepared, signed and acknowledged pursuant to the provisions of Sections 2466 and 2468 of the Civil Code of the State of California, their certificate of doing business under the fictitious name and style of Shanmac Co. and filed said certificate with the County Clerk of the City and County of San Francisco, State of California in which the principal place of business of said copartnership is situated and caused said certificate to be published once a week for four (4) successive weeks in a newspaper published in the city and county of San Francisco, state of California and filed with the County Clerk of said City and County of San Francisco, State of California, their affidavit showing the publication of such certificate. [19]

X.

That within ninety (90) days from the date on which plaintiffs in intervention performed the last of the labor, or furnished or supplied the last of the material, or leased or rented the last of the equipment hereinabove referred to, plaintiffs in intervention gave written notice of their claim against defendant in intervention Andrew Pollia to defendant in intervention Flotation Systems, Inc., stating therein with substantial accuracy the amount claimed and the name of the party to whom such equipment was furnished and for whom the labor in reference thereto was done or performed.

Wherefore, plaintiffs in intervention prays judgment against defendants in intervention and each of them in the sum of One Thousand Forty-Eight Dollars and seventy-three cents ($1,048.73) together with interest thereon from date at legal rate, for costs of suit and for such other relief as may be just and meet in the premises.

TORREGANO & STARK,
By CHARLES M. STARK,
Attorneys for Plaintiffs in Intervention. [20]

United States of America,
Northern District of California,
City and County of San Francisco—ss.

T. G. Shannon, being first duly sworn, deposes and says:

That he is one of the plaintiffs in intervention

in the above entitled action; that he has read the foregoing Complaint in Intervention and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein alleged upon information and belief, and as to those matters, that he believes it to be true.

(Sgd) T. G. SHANNON.

Subscribed and sworn to before me this 13th day of September, 1941.

(Seal) (Sgd) LOUIS WIENER,

Notary public in and for the city and county of San Francisco, state of California.

[Endorsed]: Filed Sept. 29, 1941. [21]

[Title of District Court and Cause.]

ANSWER TO COMPLAINT IN INTERVENTION UNDER TITLE 40 U.S.C.A., SEC. 24 a.c. FEDERAL RULES OF CIVIL PROCEDURE.

[22]

Now come the defendants, Flotation Systems, Inc., a corporation, and United States Fidelity and Guaranty Company, a corporation, and for answer to the Complaint of plaintiff in intervention, admit, deny and allege as follows:

I

Admit all the allegations contained in Paragraph I, II, III, IV, V and VI, of the Complaint of plaintiff in intervention.

II

Denies that Andrew Pollia, as alleged in Paragraph VII, in plaintiff's Complaint in intervention, did with the express knowledge and consent of this defendant, hire and take from plaintiff in intervention two Northwest Power Draglines and Cranes, at an agreed rental therefor, of Seven Dollars, ($7.00), per hour plus payment of overtime to the operator thereof, and in this connection said defendants in intervention allege; that they have or had no knowledge of the hiring of plaintiff in intervention by said Andrew Pollia.

III

Deny that these defendants in intervention became indebted to plaintiff in intervention in the sum of Four Thousand Six Hundred Fifty-Two Dollars and Ninety-Five Cents ($4652.95), and that there is now due, owing and unpaid to plaintiff in intervention, the sum of One Thousand Forty-Eight Dollars and Seventy-Three Cents, ($1048.73). Defendants in intervention allege that they have not sufficient information or belief to enable them to answer said allegations and basing their denial on those grounds, deny each and every, all and singular of said allegations, and deny that plaintiff in intervention has demanded of these defendants payment to them of said sum of One Thousand Forty-Eight Dollars and Seventy-Three Cents, ($1048.73).

IV

Deny that within ninety (90) days, or at any other time, or [23] at all, after the furnishing of the labor and material, as alleged in Paragraph X, that plaintiff in intervention gave written notice to the defendants in intervention, or either of them, of said alleged claim against Andrew Pollia.

Wherefore these defendants in intervention pray, that said plaintiff in intervention take nothing against them, but that they have judgment for their costs herein incurred.

JOHN D. HARLOE,
Attorney for Defendants.

State of California,
City and County of San Francisco—ss.

John D. Harloe, being first duly sworn, deposes and says:

I am the Attorney for Flotation Systems, Inc., and he makes this verification for and on behalf of said Flotation Systems, Inc., by reason of the fact that said defendant is absent from the City and County of San Francisco, the County wherein your affiant has his office, and that he has read the foregoing Answer, and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated on information or belief, and as to such matters that he believes it to be true.

JOHN D. HARLOE.

Subscribed and sworn to before me this 8th day of October, 1941.

(Seal) MARK E. LEVY,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Oct. 8, 1941. [24]

[Title of Court and Cause.]

MEMORANDUM DECISION

This is an action to recover an alleged balance due upon a written sub-contract for service to be rendered and material to be furnished in connection therewith and for certain alleged extra services and materials rendered and supplied at the request or direction of Defendant, Flotation Systems, Inc. Plaintiffs in Intervention pray for judgment against both Plaintiff and Defendants as Defendants in Intervention for an alleged balance due for the use of certain draglines and cranes furnished for the use of Plaintiff in the services rendered by him as such sub-contractor. The main contract was one entered into by the Defendant, Flotation System Inc., with the United States for the installation of the gasoline storage and distribution system at the Naval Air Station, located in the City of Alameda, State of California.

The controlling question of law presented in this case is the interpretation to be placed upon the

written contract entered into between the Plaintiff, Pollia, and the Defendant, Flotation Systems, Inc. The following quotations therefrom sufficiently present the question:

> "Item 1: Complete installation of all gasoline pipe line * * * welding and testing all joints, and all connections to Pit Boxes A (1), B (1), C-2 (2) D, (8) and E (16). * * *
>
> "Item 2: Complete installation of all Cast Iron U. S. Joint Water lines * * *, connection and testing of all joints, and all connections to Pit Boxes * * *. * * *.
>
> "Item 3: Complete installation of a 12" terra-cotta drain pipe * * *, connection of joints and all connections to Pit Boxes C-2(2) and D (8). * * *.
>
> "Item 4: Painting of all piping installed by us inside of Pit Boxes A, B, C, D and E."

[25]

It is the conclusion of the Court that the expression: "to Pit Boxes," will not include the cost to Plaintiff of the labor and material supplied by Plaintiff within said "Pit Boxes" other than that expressed in "Item 4;" that Intervenor Plaintiffs are entitled to judgment as prayed for and costs; that Plaintiff is entitled to judgment as prayed for, subject to the judgment for Intervenors if paid by Defendants.

It is ordered that judgments for Plaintiff and Intervener Plaintiffs be entered accordingly.

It is further ordered that the attorney for plain-

tiff submit proposed findings of facts and conclusions of law and forms of judgments and serve copies thereof on attorneys for Defendants and Intervening Plaintiffs.

Dated this 12th day of June, 1942.

FRANK H. NORCROSS,
District Judge.

[Endorsed]: Filed Jun. 12, 1942. [26]

[Title of Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came on regularly for trial on the 17th, 18th and 20th days of February, 1942, before the court without a jury, a jury trial having been duly waived by the parties and J. J. Doyle, Esq., appearing as attorney for United States for use of Andrew Pollia, plaintiff, and Andrew Pollia, Defendant in Intervention; John D. Harloe, Esq., appearing as attorney for Flotation Systems, Inc., a corporation, United States Fidelity and Guaranty Company, a corporation, defendants, and defendants in Intervention; Torregano and Stark, Esqs., by Charles M. Stark, Esq., appearing as attorneys for T. G. Shannon and B. W. Mackie, co-partners doing business under the fictitious name and style of Shanmac Co., plaintiffs in Intervention, and

from the evidence introduced, the court finds the facts as follows:

I

That defendant Flotation Systems, Inc., a corporation, is a corporation duly and regularly licensed to transact business in the State of California.

II

That defendant United States Fidelity and Guaranty Company, a corporation, is a corporation organized and existing under and by virtue of the laws of the State of Maryland, and duly and regularly licensed to transact business in the State of California.

III

That on or about the 22nd day of January, 1940, the defendant Flotation Systems, Inc., a corporation, was awarded a contract by the United States of America, more particularly [27] identified and known as NYO #3850, Navy Department of the United States of America, for the installation of the gasoline storage and distribution system at the Naval Air Station, located in the City of Alameda, County of Alameda, State of California.

IV

That on or about the 22nd day of January, 1940, the defendant Flotation Systems, Inc., a corporation, as principal, and the defendant United States Fidelity and Guaranty Company, a corporation, as surety, pursuant to its corporate powers and li-

cense, executed and delivered to the Navy Department of the United States of America, a certain Security Bond, in the penal sum of One Hundred Seventy-five Thousand Dollars ($175,000.00), guaranteeing the faithful performance by the defendant Flotation Systems, Inc., a corporation, of said contract, in the payment of all claims of laborers and material men and sub-contractors, engaged by the defendant Flotation Systems, Inc., a corporation, in the performance of said contract.

V

That on the 28th day of May, 1940, the defendant Flotation Systems, Inc., a corporation, entered into a certain Sub-contract with Andrew Pollia, which is herein set forth:

"May 28, 1940.

Re: Gasoline Storage and Distribution and Distribution System Naval Air Station, Alameda, Calif. Specification No. 9505.

Flotation Systems, Inc.,
4031 Goodwin Avenue
Los Angeles, California

Gentlemen:

For the sum of Sixteen Thousand and Forty Dollars ($16,040.00), I propose to furnish the following labor and [28] material, all in strict accordance with the Bureau of Yards and Docks Specification 9505.

Item 1: Complete installation of all gasoline

pipe line as covered by plans accompanying Spec. 9505, including necessary excavation, backfill, replacement of red rock, surfacing, repairs to any existing roads, welding, and testing all joints, and all connections to Pit Boxes A (1), B (1), C-2 (2), D, (8), and E (16). It is understood that Flotations Systems, Inc. will furnish all necessary pipe and fittings, and I will furnish all welding materials and equipment.

Item 2: Complete installation of all Cast Iron U. S. Joint Water lines as covered by plans accompanying Spec. 9505, including necessary excavation, backfill, replacement of red rock surfacing, repairs to any existing roads, connection and testing of all joints and all connections to Pit Boxes A (1), B (1), C-2 (2), D (8), and E (16). It is understood that Flotation Systems, Inc. will furnish all pipe, fittings, follower rings, and gaskets, and that I will furnish the 10″ rock base under the pipe lines in the trench.

Item 3: Complete installation of a 12″ terra-cotta drain pipe, to be installed in lieu of the 8″ drain line as covered by the plans accompanying Spec. 9505, and including necessary excavation, backfill, replacement of red rock, surfacing, repairs to any existing roads, connection of joints, and all connections to Pit Boxes C-2 (2) and D (8). It is understood that I will furnish the 12″ terra cotta pipe, all fittings required, and the 10″ rock fill under pipe in trenches. It is further understood that in the event any excavating below a depth of six feet

is required on this line, I will receive $1.60 per cubic yard of excavation done below this depth, in addition to the amount stipulated above.

Item 4: Painting of all piping installed by us inside of pit boxes A, B, C, D, and E.

I agree to wrap all joints and fittings installed under Item 1, above, for the following prices, to be paid in addition to the amount stipulated above:

6" joints and fittings @.....$2.10 each
5" joints and fittings @..... 1.70 each
4" joints and fittings @..... 1.40 each
3" joints and fittings @..... 1.10 each

I agree to begin work within three days (holidays excluded) after acceptance of this agreement, and to complete all work after acceptance of this agreement, and to complete all work covered by this agreement within forty-five (45) days after acceptance of this agreement; and that in the event of my failure to do so, Flotation Systems, Inc., will have the right to proceed with the work and charge the cost of completing same against the amount stipulated in this agreement.

Terms are to be payments monthly on the basis of 90% of the work completed, and the balance of 10% to be paid upon completion of work. [29]

Respectfully yours,

ANDREW A. POLLIA.

Accepted by:

EUGENE CERIAT.

Date: 5-28-40"

That subsequent to said 28th day of May, 1940, and in addition to the services and work covered by said sub-contract and upon the express request of defendant Flotation Systems, Inc., a corporation, and in accordance with extra work orders issued by said defendant Flotation Systems, Inc., a corporation, Andrew Pollia, performed extra services and work and delivered material in regard thereto and in the installation of fittings inside of gasoline pits, patching and wrapping pipe lines and installations in the water control pits; that the reasonable value of the materials supplied and services performed by said Andrew Pollia, was and is the sum of Twenty-six Thousand Nine Hundred Eight and 70/100 ($26,908.70).

VI

That all of said services and work done by the said Andrew Pollia has been completed according to plans and specifications and in good workman like order; that defendant Flotation Systems, Inc., a corporation, has paid Andrew Pollia on account of said services and work, the amount of Seventeen Thousand One Hundred Ninety-one and 49/100 Dollars ($17,191.49); that Andrew Pollia has not been paid in full therefore; that more than Ninety (90) days has elapsed after the day on which the last of the labor was done or performed or material furnished or supplied; that the balance thereof, unpaid at the institution of this suit, is the sum of Nine Thousand Seven Hundred Seventeen and 21/100 Dollars ($9,717.21). [30]

VII

Plaintiffs in Intervention at the request of defendant Andrew Pollia and with the express knowledge and consent of defendant in Intervention, Flotation Systems, Inc., a corporation, hired and took from plaintiffs in Intervention certain drag lines and cranes which were used by Andrew Pollia, defendant in Intervention in performance of his subcontract with Flotation Systems, Inc., a corporation, defendant in Intervention, and that there is now due, owing and unpaid from defendants in Intervention, to plaintiffs in Intervention, the sum of One Thousand Forty-eight and 73/100 Dollars ($1048.73).

VIII

That within ninety (90) days from the date on which plaintiffs in intervention hired, took and used in the performance of work herein plaintiffs in intervention gave written notice of their claim against defendant in intervention Andrew Pollia and to defendant in intervention, Flotation Systems, Inc., a corporation, stating the amount claimed, the name of the party to whom such equipment was furnished and for whom the labor in reference thereto was done or performed.

IX

That Flotation Systems, Inc., a corporation, was not called upon to nor did purchase any materials for the purpose of completing said work.

X

That the expression contained in the contract of May 28, 1940, "to pit boxes" does and will not include the cost to plaintiff of the labor and material supplied by plaintiff "inside of pit boxes" other than that expressed in Item 4.

As a conclusion of law from the foregoing facts, the court finds: [31]

That United States for use of Andrew Pollia, plaintiff, do have and recover judgment in the sum of Nine Thousand Seven Hundred Seventeen and 21/100 Dollars ($9,717.21) and costs from defendants Flotation Systems, Inc., a corporation and United States Fidelity and Guaranty Company, a corporation, provided that T. G. Shannon and B. W. Mackie, co-partners doing business under the fictitious name and style of Shanmac Co., plaintiffs in intervention, do have and recover judgment in the sum of One Thousand Forty-eight and 73/100 Dollars ($1048.73) and costs from defendants in intervention Andrew Pollia, Flotation Systems, Inc., a corporation, United States Fidelity and Guaranty Company, a corporation, with the proviso that if Flotation Systems, Inc., a corporation, and United States Fidelity and Guaranty Company, a corporation, pay T. G. Shannon and B. W. Mackie, co-partners doing business under the fictitious name and style of Shanmac Co., plaintiffs in intervention, then United States for the use of Andrew Pollia, plaintiff, do have and recover from Flotation Systems, Inc., a corporation, and United

States Fidelity and Guaranty Company, a corporation, the sum of Eight Thousand Six Hundred Sixty-eight and 48/100 Dollars ($8,668.48) and costs, and it is ordered that judgment be entered accordingly.

Dated this 1st day of July, 1942.

FRANK H. NORCROSS,
District Judge.

[Endorsed]: Filed Jul 1 1942. [32]

In the Southern Division of the United States District Court of the Northern District of California.

Civil Action File Number 21905-W

UNITED STATES for use of ANDREW POLLIA, Plaintiff,

vs.

FLOTATION SYSTEMS, INC., a corporation, UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation, FIRST DOE COMPANY, a corporation, SECOND DOE, THIRD DOE and FOURTH DOE, Defendants.

T. G. SHANNON and B. W. MACKIE, co-partners, doing business under the fictitious name and style of SHANMAC CO., Plaintiffs in Intervention,

vs.

ANDREW POLLIA, FLOTATION SYSTEMS, INC., a corporation, UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation, FIRST DOE COMPANY, a corporation, SECOND DOE, THIRD DOE and FOURTH DOE, Defendants in Intervention.

JUDGMENT

This cause came on regularly for trial on the 17th, 18th and 20th days of February, 1942, before the court without a jury, a jury trial having been duly waived by the parties and J. J. Doyle, Esq., appearing as attorney for United States for use of Andrew Pollia, plaintiff, and Andrew Pollia, Defendant in Intervention; John D. Harloe, Esq., appearing as attorney for Flotation Systems, Inc., a corporation, United States Fidelity and Guaranty Company, a corporation, defendants, and defendants in Intervention; Torregano and Stark, Esqs., by Charles M. Stark, Esq., appearing as attorneys for T. G. Shannon and B. W. Mackie, co-partners doing business under the fictitious name and style of Shanmac Co., plaintiffs in Intervention, and the court having heard the testi- [33] mony and having examined the proofs offered by the respective parties, and the court being fully advised in the premises and having filed herein its Findings of Fact and Conclusions of Law, and having directed that judgment be entered in accordance therewith; now therefore, by reason of the law and Findings aforesaid,

It Is Hereby Adjudged, Ordered and Decreed:

That United States for use of Andrew Pollia, plaintiff have judgment in the sum of Nine Thousand Seven Hundred Seventeen and 21/100 Dollars ($9,717.21) with interest thereon, at the rate of seven (7%) per cent per annum and costs of

suit against defendants Flotations Systems, Inc., a corporation, and United States Fidelity and Guaranty Company, a corporation.

That T. G. Shannon and B. W. Mackie, co-partners doing business under the fictitious name and style of Shanmac Co., plaintiffs in intervention, have judgment in the sum of One Thousand and Forty-eight and 73/100 Dollars ($1,048.73), with interest thereon at the rate of seven (7%) per cent per annum and costs of suit against defendants in intervention, Andrew Pollia, Flotation Systems, Inc., a corporation, United States Fidelity and Guaranty Company, a corporation, with the proviso that if Flotation Systems, Inc., a corporation, and United States Fidelity and Guaranty Company, a corporation, pay T. G. Shannon and B. W. Mackie, co-partners doing business under the fictitious name and style of Shanmac Co., plaintiffs in intervention, then United States for the use of Andrew Pollia, plaintiff, have judgment in the sum of Eight Thousand and Six Hundred Sixty-eight and 48/100 Dollars ($8,668.48) with interest thereon at the rate of seven (7%) per cent per annum, and costs of suit, against Flotation Systems, Inc., a corporation, and United States Fidelity and Guaranty Company, a corporation.

Dated this 1st day of July, 1942.

FRANK H. NORCROSS,
District Judge.

Approved as to Form:

TORREGANO & STARK,
Attorneys for Plaintiff in Intervention.

Approved as to Form:

JOHN D. HARLOE,
Attorney for Defendants and Defendants in Intervention.

[Endorsed]: Filed July 1, 1942. [34]

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT

Tuesday, February 17, 1942

Before: Hon. Frank H. Norcross, Judge.

Counsel Appearing:

For Plaintiff:
John J. Doyle, Esq.
For Defendant:
John D. Harloe, Esq.
For Intervenor:
Charles M. Stark, Esq.

Mr. Doyle: If it please the Court: The action this morning is one for money due as alleged in the complaint to an individual by the name of Andrew Pollia, for certain work that was [37*] performed at the Naval Air Station in Alameda, under a contract with the Flotation Systems, Inc., a corpora-

*Page numbering appearing at foot of page of original Reporter's Transcript.

tion. My name is John J. Doyle, and I represent Mr. Pollia.

The Flotation Systems, Inc., a corporation, denies that the money that is alleged to be due under the contract was due, and, incidentally, we claim that that amount at the present time, under the bill of particulars that was served, is $9717.21. It is alleged that the balance was paid.

We expect to prove that the balance was due as a result not only of an original contract for some original work at the Naval Air Base, but also some extra orders that were issued subsequent to the issuance of the original contract. The Bonding Company defendant is here by reason of the fact that they executed a bond to the Government for the faithful performance of the job.

During the course of the contract, Mr. Pollia having a sub-contract with the Flotation Systems, Inc., a corporation, the corporation being the general contractor—during a part of the sub-contractor's work he was required to and did obtain the use of certain equipment for the purpose of excavation for purpose of installing equipment and pipe under his sub-contract with the general contractor. As a result of this litigation, certain issues arose; there was a bill that was left unpaid by the sub-contractor for the equipment for the excavation, and this brings us to the point that a petition was filed for leave to file a complaint in intervention, which is not opposed by the plaintiff nor the defendant, I believe. That complaint is also on file and at issue. In so far as the plaintiff is concerned, with

reference to the complaint in intervention, we have not filed any answer to the complaint in intervention.

Mr. John D. Harloe represents the Flotation Systems, Inc., a [38] corporation, and United States Fidelity and Guaranty Company, a corporation, and the firm of Messrs. Torregano & Stark represents the plaintiff in intervention.

I might state, your Honor, that the original contract that was entered into between Pollia, the subcontractor, and the Flotation Systems, Inc., a corporation, the general contractor, provided for certain work, and I do not think there is any dispute that the point in issue, the real point in issue, at least, was, I understand from the pleadings and various conversations with the defendants' attorney, is not an interpretation of the general contract, but an interpretation of Pollia's sub-contract with the Flotation Systems, Inc., a corporation. I do not think that there is any dispute about the extra work orders given. If there is, it will be raised, so far as I know, the first time this morning.

Briefly, the point is this, the contract which was executed and approved between Mr. Pollia and the Flotation Systems, Inc. provided that he was to do certain work up to but not including some gasoline storage pit fixtures which were being constructed at the Air Base at Alameda. I understand that the contention of the defendant corporation is that the interpretation of the contract is, notwithstanding the wording of the agreement between Mr. Pollia and the Flotation Systems, Inc., notwithstanding

the actual work done, that the contract should be interpreted that Mr. Pollia was to do all of the work. That means not only up to the pit, but included in the pit, for which they claim that there is no liability upon their contract, and there is no money due to Pollia because he was required to do all of the work.

Mr. Stark: On the basis of plaintiff's statement to your [39] Honor, and in so far as it relates to Pollia, we ask that the default of Mr. Pollia be entered as shown in the record, in so far as his obligation to us is concerned, leaving our defense limited to the answer filed by the Flotation Systems and the Bonding Company.

The Court: That order may be entered if there is no objection.

Mr. Harloe: Just a brief statement of the position of the defendant Flotation Systems, Inc. Flotation Systems, Inc. intends to prove to your Honor the following facts: That the contract was entered into by and between the Flotation Systems, Inc. and Andrew Pollia for the doing of certain work at the Naval Air Base, over in Alameda.

We intend to show that the contract was entered into by and between these parties by reason of the examination of the specifications and plans for the doing of this work by Andrew Pollia, and then upon the submission by him of a figure in a certain amount for the doing of that work.

The original contract between Andrew Pollia and the Flotation Systems was written by Mr. Pollia,

himself, in the form of a letter, and accepted by the Flotation Systems; that contract will be offered in evidence, in any event, and it provides for the sum of $16,040. The contract says, "I propose to furnish the following labor and material, all in strict accordance with the Bureau of Yards and Docks Specifications 9505."

I want to answer Mr. Doyle's statement to your Honor as to the interpretation of this contract and explain to your Honor what we intend to prove and show, that there was no misunderstanding as to what the contract called for at the time it was entered into at the *prive* it was entered into. In other words, [40] if your Honor please, after Mr. Pollia had examined the plans and specifications for the doing of this work he submitted this figure to the Flotation Systems, Inc., and they accepted his bid, and thereafter he drew up this contract. In the interpretation of the contract, I want to call your Honor's attention to this. This work over there was the gasoline distribution system for the Naval Air Base. It consisted chiefly and practically of digging pits for the purpose of putting the pipes in; in other words, they are called pits; they are concrete pits in which gasoline tanks are placed, and then the pipe is fitted to the gasoline tank. It was all the work, we submit, to be done, under the contract. During the work in question a question arose with reference to union work; that will not come into the trial, that has nothing to do with the case. The point that arises is this, in the interpre-

tation of the contract that Pollia was the sub-contractor of the Flotation Systems, Inc. for the doing of this work. He examined the plans and specifications for the doing of this work, and gave a bid for the doing of it.

The first item of this contract, which Mr. Pollia, himself, drew, says, "Complete installation of all gasoline pipe as covered by plans accompanying specifications 9505." That is the first line of his contract. He says, "Complete installation of all gasoline pipe as covered by plans accompanying specifications 9505." Then the contract goes on and says, "including"—it does not say "excluding," but it says "including necessary excavation, back-fill, replacement of red rock, surfacing, repairs to any existing roads, welding, and testing all joints and all connections to pit boxes A (1), B (1), C-2 (2), D (8), and E (16). It is understood that Flotation Systems, Inc. will [41] furnish all necessary pipe and fittings,"—I want to call your Honor's specific attention to that wording, "all necessary pipe and fittings, and I will furnish all welding materials and equipment."

Now, that is the only clause necessary to be read to your Honor with respect to that. The Flotation Systems, Inc. feels that they are bound to pay Andrew Pollia for the work of installing all necessary pipe and fittings pursuant to the plans and specifications for the installation of the gasoline distribution system there at the base at Alameda.

We further intend to show this fact, that An-

drew Pollia commenced the work and proceeded up until the time when a change was made by the Government engineers in the installation of certain fittings inside of the pits; at that time he had installed approximately 80 per cent. of the fittings in the pits, and that thereupon a change order was given to Andrew Pollia for the installation of the changed fittings. Now, that was the first time that any question arose between Andrew Pollia and the Flotation Systems as to the interpretation of the contract, and as to what work Andrew Pollia was to do under and pursuant to his contract. Thereupon the question arose as to what was meant by the clause, "welding and testing all joints and all connections to pit boxes."

Now, for a complete understanding of that your Honor must know that all joints of pipes which were brought up to the pit were laid in the ground at a depth of five or six feet—I don't know just exactly the depth; but a trench had to be dug, the pipe laid into the trench, and then filled by the back-fill over the trench, and the surface leveled. Prior to the doing of that these joints and pipes had to be tested by the engineers [42] in charge of the doing of the work in order to ascertain, as a matter of fact, whether they were properly placed in the ground, or not. The clause of the contract says, "welding and testing all joints and all connections to pit boxes." Your Honor will understand that the pit boxes were open concrete pits, large concrete pits. A pit is a hole in the ground

and the concrete is poured in. In the building of these pits a tank was placed in the pit, and connections from the tanks were made in the open pits to the tanks.

Now, as I say, we will show to your Honor that Andrew Pollia, our sub-contractor, completed approximately 80 per cent. of the installation of the fittings inside of the pits before any question arose between them as to whether he was or was not to do that work under his contract, and the reason that was raised was because of the fact that in ordering changes it was necessary for him to demand a change order, which he was perfectly right in demanding; in other words, it was extra work for which he was entitled to extra compensation for the work he was required to do.

A bill of particulars was demanded, and the bill of particulars sets forth certain items of charges by Andrew Pollia, which we deny, some in toto, some in part, which will be brought up by the testimony with reference to those items.

Now, the answer also sets forth this fact, the answer of Flotation Systems, Inc., and I take it that the claim of the intervenor Shanmac Co. is in practically the same situation as some of the others. It is set forth that in the doing of this work by Andrew Pollia he sub-contracted our purchase material from suppliers, which people whom he purchased from have not been paid, and they gave notification to the Flotation Systems, Inc. [43] of that fact, demanding their payment from them. Those

as to whom there was no question as to the amount due the Flotation Systems, Inc. paid, and they are set forth in an Exhibit C attached to the answer. There are five of them. They are Reed Co., in the sum of $487.52; Western Crane Co., $44.15; Thomas Welding Co., $182.50; E. K. Wood Lumber Company, $4.82; and J. Catucci, $746.59. Those were bills which Mr. Pollia had incurred, and upon proper notification from them they were paid by Flotation Systems, Inc., and any judgment that might be obtained by Mr. Pollia, they would be a proper set-off.

That, in brief, is our defense to this action, and we think that Mr. Pollia, after the Flotation Systems has paid these amounts, amounting to $1365.58, has been overpaid instead of underpaid.

Mr. Doyle: I will call Mr. Pollia.

ANDREW A. POLLIA,

Called for the Plaintiff; Sworn.

Mr. Doyle: Q. What is your name, please?

A. Andrew A. Pollia.

Q. Your residence?

A. 695 22nd Avenue, San Francisco.

Q. Your occupation?

A. Mechanical engineer and contractor.

Q. In April or May of 1940 were you engaged in the same line of activity at the Naval Air Station at Alameda? A. Yes.

(Testimony of Andrew A. Pollia.)

Q. When you originally went there, did you go there to do the so-called Flotation job, or were you there on some work before that?

A. I was installing mechanical service for the boathouse at the Naval base.

Q. That had nothing to do with this job?

A. No.

Q. While you were doing this job in the boathouse, did you meet [44] a man by the name of Mr. Ceriat? A. Yes.

Q. Did you know who Mr. Ceriat was at that time? A. No, I did not.

Q. Did he approach you? A. Yes.

Q. Did he inform you who he was?

A. Yes.

Q. What did he tell you?

A. He told me that he was superintendent of construction for the Flotation System, contractors for installing the gas fuel system.

Q. Did you have any further conversation at that time?

A. They were seeking at that time to install a temporary water line and he asked me if I would be interested in submitting a price of furnishing some temporary water line, because it was to run a considerable distance from the job I was working on.

Q. What happened?

A. During the conversation he asked me if I would be interested in submitting a bid for instal-

(Testimony of Andrew A. Pollia.)

ling pipe lines relative to this gasoline storage system.

Q. When he asked you about that, was that the matter that subsequently resulted in this litigation?

A. Yes.

Q. When you were approached on that subject about submitting a bid what did you say?

A. I said I would like to submit my bid.

Q. Did you submit a bid? A. Yes.

Q. Now, at the time, did you draw up or submit an estimate to Mr. Ceriat? A. Yes.

Q. I show you a document which is dated May 27, 1940, and ask you what that is.

A. This is the proposal submitted by me to Mr. Ceriat, outlining the work that I intended to do.

Mr. Doyle: I ask that this be introduced as Plaintiff's Exhibit first in order.

Mr. Harloe: I do not want to object, but I am going to [45] object to this because this is a preliminary negotiation that was included in the executed contract.

The Court: For the present it may be marked for identification.

(The letter of May 27, 1940, from Pollia to Flotation Systems, Inc. was marked "Plaintiff's Exhibit 1 for Identification.")

Mr. Doyle: Q. Now Mr. Pollia, you submitted this letter, there, of May 27, 1940 to whom?

A. To Mr. Ceriat.

Q. Was there a discussion about it?

(Testimony of Andrew A. Pollia.)

A. Yes, there was.

Q. How many people participated in the discussion eventually?

A. Mr. Ceriat and Mr. Snyder.

Q. Will you please identify Mr. Snyder?

A. Mr. Snyder is the gentleman down there.

Q. Was he on the job at that time?

A. Yes.

Q. In what capacity was he on the job in so far as you know?

A. Well, a sort of general clerk in the office.

Q. Did Mr. Snyder, Mr. Ceriat and yourself have discussion about your proposed agreement of May 27, 1940, Plaintiff's Exhibit 1 For Identification?

A. There was some discussion as to the terms and then Mr. Snyder agreed to draw up a contract on my stationery.

Q. Did Mr. Snyder draw up a contract on your stationery? A. Yes.

Q. When you say Mr. Snyder drew up the contract, what do you mean by that?

A. He typed the contract.

Q. I will show you a document on your letterhead, Andrew A. Pollia, dated May 28, 1940, and ask you to testify to what that document is.

A. This is the document covering the work that I was supposed to do, under the contract.

Q. After Mr. Snyder read through your letter of May 27, this document was prepared?

(Testimony of Andrew A. Pollia.)

A. That is right. [46]

Q. Whose signature is that?

A. That is my signature.

Q. Andrew A. Pollia? A. Yes.

Q. And on the left-hand corner, "Accepted by" whom? A. Mr. Ceriat.

Q. And the date? A. 5/28/40.

Q. And this pen and ink "O. K. James Q. Henry"—when you submitted this agreement of May 28th and it was accepted by Mr. Eugene Ceriat, was Mr. James Q. Henry there?

A. No, he was not.

Mr. Doyle: I ask that this agreement of May 28, 1940 be introduced in evidence as Plaintiff's Exhibit first in order.

Mr. Harloe: No objection.

The Court: It may be admitted.

(The document was marked "Plaintiff's Exhibit 2.")

Mr. Doyle: Q. After Mr. Ceriat signed this document what did you do with it, in so far as Mr. Henry was concerned?

A. I understood that the document had to go to Los Angeles, to be signed by Mr. Henry, and I proceeded to go to work when it was accepted by Mr. Ceriat.

Q. Then you left that document with Mr. Ceriat?

A. Yes.

Q. At a subsequent date, the document was returned to you? A. Yes.

(Testimony of Andrew A. Pollia.)

Q. It was returned to you from Los Angeles, or from Alameda to you?

A. Well, from Mr. Ceriat to me.

Q. When you left the document, when you say it had to go to Los Angeles, what do you mean by that? A. To be signed by Mr. Henry.

Q. Did you know what capacity Mr. Henry occupied in the Flotation Systems, Inc.?

A. He was president.

Q. And it was your understanding that this document was sent to [47] him? A. Yes.

Q. Now, Item 1 of this agreement says, "Complete installation of all gasoline pipe line as covered by plans accompanying specifications 9505, including necessary excavation, back-fill, replacement of red rock surfacing, repairs to any existing roads, welding and testing all joints and all connections to pit boxes," which are specified. Did you proceed to do that work prior to the time that the document was returned to you from Mr. Henry at Los Angeles, through Mr. Ceriat?

A. Yes, I proceeded immediately after Mr. Ceriat accepted it.

Q. The agreement of May 28, 1940 refers to specifications 9505. Did you see the original plans and specifications?

A. I saw the original plans and specifications, yes.

Q. How long after you had started the work was it that there was any question about any work

(Testimony of Andrew A. Pollia.)

or any question about the work that you were doing?

A. It was the second month that a question arose.

Q. All right, what happened in the second month?

A. We were arriving with some lines to the pit and we were required to do some additional welding on connections inside of the pit on some eight-inch lines, and they issued an order to me to weld eight-inch connections.

Q. What were the circumstances resulting in issuing this or any extra work order relative to work in the pits?

A. They required these extra welding connections inside the pit in order to meet with some connections or some work being installed by the Aqua Systems.

Q. Who are they?

A. They are the people who furnished the actual control of this distribution of gasoline.

Q. Did they also furnish the actual equipment in the pit? [48]

A. They furnished the equipment inside of the pit, especially equipment connecting with connections on top of the tank, which were inside of the tank.

Q. Was there any discussion at any time about the fact that the material and equipment inside of the pit was extra or special equipment?

(Testimony of Andrew A. Pollia.)

A. Yes. Mr. Snyder told me that the work inside of the pit was extra equipment.

Q. Was there any discussion about you doing any of the Aqua Company's work? A. No.

Q. Nothing ever said about that? A. No.

Q. Did either one of these extra work orders bring us to the point where I interrupted you for a moment, about getting an extra work order for the connection of the equipment inside of the pit?

A. The extra work order that was issued and approved and paid for would show on the July statement that I rendered to the Flotation Systems.

Mr. Doyle: Have you that statement, Mr. Harloe?

Mr. Harloe: You mean a statement submitted by Mr. Pollia?

A. In July, that would have been due in August.

Mr. Harloe: We have no statement of July, Mr. Pollia.

Mr. Doyle: Q. You submitted a statement about when with respect to the testimony that you have just given? A. At the end of July.

Q. What did that statement consist of?

A. Work that had been done during the month of July, along with some extra work that had also been done.

Q. During the time that you were on the job, did you receive extra work orders? A. Yes.

Q. So that there will be no question about it, irrespective of any legal interpretation of any extra

(Testimony of Andrew A. Pollia.)

work orders that you re- [49] ceived, it was your understanding that they should not be included in the original contract of May 28th, but as a matter of fact separate and distinct, and entirely different work? A. Yes.

Mr. Harloe: Just a minute, I will object to the form of that question, his understanding. The work orders speak for themselves.

The Court: The written instruments undoubtedly speak for themselves. We will consider that question later.

Mr. Doyle: Q. I show you a document and ask you what that is. What is that document?

A. That is an extra work order.

Q. That is dated when? A. July 31.

Q. What is the number of that extra work order? A. 273.

Q. There is a signature down in the lower right-hand corner; whose signature is that?

A. F. E. Kalte.

Q. Do you know who Mr. Kalte is?

A. Well, yes, he is the gentleman on the right, there.

Q. What occupation or what status did he have with the Flotation Systems, Inc.?

A. I believe he was vice-president and secretary, I don't know.

Mr. Harloe: Q. What was the number of that?

A. 273.

Mr. Doyle: Dated July 31, 1940.

(Testimony of Andrew A. Pollia.)

Q. What were the circumstances of your getting this work order, No. 273, on July 31, 1940?

A. This work order, here, covered certain work inside of the pit.

Q. Work inside of the pit? A. Yes.

Q. What were the circumstances of that?

A. Well, Mr. Kalte asked me to give him a price for the installation of this work inside of these ten pits.

Q. Had there been any question up to July 31 about your original contract of May 28, 1940 for doing work inside of the pits? [50]

A. There was not.

Q. Upon receipt of that extra work order from Mr. Kalte, did you commence to do work inside of the pit?

A. Mr. Kalte asked me for a price on the work inside of these ten pits.

Q. Did you give him a price?

A. I figured up a price and he went out and came back a little while later and said he thought it was a little high, but he issued the order.

Q. When you got that order did you proceed to do the work?

A. We did not proceed with the work on these various pits right away, because they did not have the equipment.

Q. I realize that, but eventually you commenced to and actually did the work covered by that order?

A. Yes.

(Testimony of Andrew A. Pollia.)

Q. And the amount of that extra work order is what sum? A. Ten pits at $77 a pit.

Mr. Doyle: We ask that this be introduced in evidence as Plaintiff's Exhibit next in order.

The Court: It may be admitted.

(The Extra Work Order of July 31, 1940 was marked "Plaintiff's Exhibit 3.")

Mr. Doyle: Q. I show you another form, in order to save time, of Flotation Systems, Inc., No. 274. The signature down in the lower right hand corner of that form is whose?

A. Mr. Kalte's.

Q. What were the circumstances of the issuance of that extra work order?

A. That was similar to No. 273.

Q. Covering the same situation?

A. Covering the same situation, only in this case we had stayed on the job as long as we could and they still did not have the equipment to finish this, so we had completed all the work on 273 and all the work covered by the contract, and covered by the extra work orders, and then we notified Mr. Snyder whenever he got this equipment we would come [51] back and complete this extra work order.

Q. Did the equipment eventually come?

A. It eventually came, but we were never notified to come over and complete it.

Mr. Doyle: There is a second work order 274 dated July 31, 1940; the price to be paid for this

(Testimony of Andrew A. Pollia.)

service is $77 per pit. I ask that that be introduced as Plaintiff's Exhibit next in order.

The Court: It may be admitted and marked.

(The work order of July 31, 1940, No. 274, is marked "Plaintiff's Exhibit 4.")

Mr. Doyle: Q. During the time you did the extra work under work orders 273 and 274, from where did you receive the equipment you were using? A. From the Flotation Systems.

Q. Your contract of May 28, 1940, was for labor and installation? A. Yes.

Q. Not equipment? A. Not equipment.

Q. And you waited upon delivery from Flotation of the material to do the work as provided by the contract of May 28, 1940 in orders 273 and 274?

A. Yes.

Q. I will show you, in the interest of time, an extra work order No. 280, dated August 3, 1940, with a signature in the lower right-hand corner. Whose signature is that? A. E. Ceriat.

Q. He is the gentleman you have heretofore referred to? A. Yes.

Q. What were the circumstances of the issuance of that extra work order?

A. They wanted to install an extra 165 feet of 6-inch cast iron water main.

Q. You were subsequently given an extra work order for that? A. Yes.

Mr. Doyle: I ask that that be introduced in evidence as Plaintiff's Exhibit next in order. [52]

(Testimony of Andrew A. Pollia.)

The Court: It may be admitted and marked.

(Extra work order of August 3, 1940, No. 280, was marked "Plaintiff's Exhibit 5.")

Mr. Doyle: Q. I will show you another extra work order No. 1207, dated August 26, 1940; whose signature is that in the lower right-hand corner?

A. That is Mr. Snyder's.

Q. What were the circumstances of the issuance of that extra work order?

A. They ordered more labor to install some branch lines, and I furnished them with labor for them.

Q. That price was how much?

A. $208.

Mr. Doyle: I ask that that be introduced in evidence as Plaintiff's Exhibit next in order.

The Court: It may be admitted and marked.

(Extra work order No. 1207 of August 26, 1940 was marked "Plaintiff's Exhibit 6.")

Mr. Doyle: Q. I will show you another extra work order No. 1215, dated August 29, 1940. Whose signature is that in the lower right-hand corner?

A. Mr. Snyder's.

Q. What were the circumstances with respect to the issuance of that extra work order?

A. The Inspection Division of the Navy Department at Alameda insisted that they clamp these pipe lines, and Mr. Snyder issued an order for me to place those clamps on the pipe line connecting to the pits in various places.

(Testimony of Andrew A. Pollia.)

Q. Pursuant to that extra work order did you do the work? A. Yes.

Mr. Doyle: I ask that that be introduced into evidence as Plaintiff's next in order.

The Court: It may be admitted and marked.

(The work order dated August 29, 1940, No. 1215, was marked "Plaintiff's Exhibit 7.")

[53]

Mr. Doyle: Q. I show you extra work order No. 1431 from the Flotation Systems, Inc. Whose signature is that in the lower right-hand corner of the word order?

A. I can't make that out very good, it looks like Mr. Taylor.

Q. Was there a Mr. Taylor connected with the Flotation Systems, Inc.? A. Yes, there was.

Q. Do you know what Mr. Taylor's official connection or capacity was? A. No, I do not.

Q. This document of the Flotation Systems, Inc. numbered 1431, signed by some initials and the last name Taylor, was issued to you for what purpose? A. I don't know.

Q. It states, "To cover field pipe work as per contract of May 28, 1940." A. Yes.

Q. $16,040. A. Yes.

Mr. Doyle: I ask that that be introduced in evidence as Plaintiff's Exhibit next in order.

The Court: It may be admitted and marked.

(Extra work order dated 7/1/40, No. 1431, was marked "Plaintiff's Exhibit 8.")

(Testimony of Andrew A. Pollia.)

Mr. Doyle: Q. On the letter of May 28, 1940, in which you quoted a price on the work and these extra work orders, you proceeded to do the work as provided by those contracts, did you?

A. Yes.

Q. I will show you another document which is dated August 7, 1940, on the letterhead of Flotation Systems, Inc., signed by Eugene Ceriat, Construction Superintendent, and ask you what that is.

A. This relates to wherever we made a weld and it left a joint that was unprotected, we were to protect this fitting, or joint, or whatever the case might be, with an approved wrapping that was specified by the Navy, and this covered the work set forth [54] in here.

Q. Did you proceed to do the work specified in this letter of August 7, 1940? A. Yes.

Mr. Doyle: I ask that that be introduced in evidence as Plaintiff's Exhibit next in order.

The Court: It may be admitted and marked.

(The letter of August 7, 1940, was marked "Plaintiff's Exhibit 9.")

Mr. Doyle: Q. After you had been doing work for some time did a question come up about some money being paid?

A. That was on the last demand that I sent a statement in for, on which I only received a portion of the money, when the question of money arose.

Q. Now, at that time did Mr. Kalte, as far as you know, come up from Los Angeles and see you on the job? A. Yes.

(Testimony of Andrew A. Pollia.)

Q. What conversation did you have on the job with Mr. Kalte relating to work and/or money?

A. At the time that I talked to Mr. Kalte, it was in August, the latter part of August.

Q. Of what year? A. 1940.

Q. Go ahead.

A. We had done a lot of work inside of the pits based on a unit price.

Q. What do you mean by work inside of the pits at a unit price?

A. Well, that was work that came up inside of the pits, and Mr. Snyder submitted a unit price list to me, which was so much a joint, and so much a fitting inside of the pits.

Q. When Mr. Snyder submitted that to you was there any question raised at that time by anybody that the work that you were then to do inside of the pits was work covered by the original contract of May 28, 1940, and their contract order of July 1, 1940, 1431? A. No. [55]

Q. There was not? A. Yes.

Q. Now, then, this work that you were doing, the unit price job, what discussion was there about that matter?

A. The only discussion I had with Mr. Kalte in the latter part of August, 1940, was I told him that a considerable amount of this work had been done.

Q. A considerable amount of what work, inside of the pits?

A. No, this extra unit price order.

(Testimony of Andrew A. Pollia.)

Q. Go ahead.

A. Mr. Kalte told me that before I came down with the bill, or before I sent the bill to the Flotation Systems, to have Mr. Snyder itemize the amount of work, and that was done.

Q. Anything else said between you and Mr. Kalte? A. No.

Q. Did you go in and see Mr. Snyder in conformance to Mr. Kalte's suggestion?

A. I made an appointment with Mr. Snyder one evening at the office of the Flotation Systems at the Alameda Naval Air Base.

Q. Who was there that evening at the office of the Flotation Systems at the Alameda Air Base?

A. Mr. and Mrs. Snyder.

Q. And yourself? A. And myself.

Q. Did Mr. Snyder prepare some kind of an advice or something to the Los Angeles office of the Flotation Systems about this matter?

A. He prepared an itemized list of the work that I had completed inside of the pits.

Q. You were there that evening while he prepared it? A. Yes.

Q. After he prepared it did he deliver it to you?

A. Yes.

Q. Was there any question then about any work about the pit, or inside the pit, or any ambiguity or any doubt expressed between either one of you?

A. No.

Q. You got a letter from Mr. Snyder, did you?

A. Yes.

(Testimony of Andrew A. Pollia.)

Q. You proceeded to Los Angeles?

A. Yes. [56]

Q. When you got to Los Angeles where did you go, I mean the following morning, not that night.

A. I went out to the office of the Flotation Systems.

Q. When you got out to the office of the Flotation Systems, the next morning, whom did you see out there? A. Mr. Kalte.

Q. Did you have a conversation with Mr. Kalte at that time and place? A. Yes.

Q. Who was present?

A. Well, I presented the bill, a statement itemized that Mr. Snyder had delivered, along with the bill. Mr. Kalte looked at it and said, "Well, I want to have a talk with Mr. Henry," and he said, "I think you ought to join us, too," and we went in and discussed it.

Q. When you say you went in and discussed it, where did you go—into Mr. Henry's office?

A. Yes, into Mr. Henry's office.

Q. Who was there?

A. Mr. Kalte, Mr. Henry and myself. A few minutes after we were inside of the office Mr. Kalte went out and called in Mr. Ceriat.

Q. There was Mr. Henry, Mr. Kalte, and Mr. Ceriat, of the Flotation Systems, and yourself, is that right? A. Yes.

Q. Just relate the conversation that occurred at that time and place.

(Testimony of Andrew A. Pollia.)

A. Well, Mr. Kalte raised the question with Mr. Henry that he was under the impression that the work inside of the pits was included in the bid.

Q. What did you tell him?

A. I told him it was not included in the contract, I said not according to the contract I have. And Mr. Henry made the statement that he did not think he even signed the contract between me and the Flotation Systems which I had in my pocket.

Q. You are talking about the letter of May 28, 1940?

A. It was O. K.'d by James Q. Henry. I said, "I have the con- [57] tract in my pocket with your name on it, Mr. Henry."

Q. What did you do?

A. Then I showed it to him.

Q. That was Plaintiff's Exhibit No. 2, is that right? A. Yes.

Q. When you showed that to Mr. Henry what was the conversation about at that time?

A. When I showed him this contract, he said, "Well, I guess that is my signature, I signed the contract, all right."

Q. Was there any discussion at that time and place about the work being up to the pit?

A. After they read the contract over, Mr. Henry and Mr. Kalte, they were discussing it in my presence, and finally Mr. Kalte said, "I guess you are the only business man here, and we have to pay you."

Q. What happened then?

(Testimony of Andrew A. Pollia.)

A. We came out to the outer office.

Q. Who are "we"?

A. Myself and Mr. Kalte, and I asked Mr. Kalte if I could get the amount of the demand, which was in the neighborhood of $5000.

Q. What did he tell you?

A. He said he would see what he could do, he called out another gentleman from another office, I believe the cashier, and he talked to him a few minutes, and then came back and advanced me a check of $1000 on account.

Q. What did he tell you then?

A. I said, "Can I get the rest tomorrow?" And he said, "I will see what I can do," so I said, "Shall I come out tomorrow?" And he said, "Yes," so I went out the next morning.

Q. You left the office, then, did you?

A. Yes.

Q. And the following morning you went back to the Flotation Systems office?

A. That is right.

Q. What happened then? Whom did you see then when you went back? A. Mr. Kalte.

Q. What did you ask him?

A. I asked him if he had done anything [58] about the balance, and he said "No." I asked him if he would care to issue a note, I would discount that note, and I could pay some of the bills, and he said they did not want to do that, I should not worry about it, but he would have the money the

(Testimony of Andrew A. Pollia.)

next trip that he was up at Alameda, in a week or so.

The Court: We will take a recess now for ten minutes.

(After recess:)

The Court: You may proceed.

Mr. Doyle: Q. We left off with when you talked about discounting the note from the Flotation Systems to get money to pay bills.

A. Mr. Kalte said they did not want to do that, for me not to worry, he would bring the money up in a week or so, I would have my demand.

Q. What did you do then?

A. I came back to San Francisco, and went back on the job. I had men working on the job all the time, anyway.

Q. You, personally, then went back on the job?

A. Yes.

Q. Did you see Mr. Kalte on the job at a later date? A. No.

Q. What took place then? Did some question arise about the payment of the balance of the money that was due you?

A. Mr. Taylor came up to Alameda.

Q. About how long a period of time elapsed after you left Los Angeles until Mr. Taylor appeared at Alameda?

A. I believe it was between four and five days.

Q. What happened when Mr. Taylor came up?

A. I asked Mr. Taylor if he brought the check up, and he said "No," he said he was busy, he had

(Testimony of Andrew A. Pollia.)

to go over to San Francisco, and when he came back he would talk about it.

Q. Did Mr. Taylor leave? A. Yes.

Q. Did he come back and see you at the Alameda Air Base? A. Yes. [59]

Q. Was that the same day?

A. The same day.

Q. When Mr. Taylor came back and saw you later on the same day, what conversation did you have then about this money?

A. He said he had taken the matter up with their attorney, and that they felt that the work that I was claiming in my demand was included in the contract, and that they were not going to pay it, if I wanted to I could go over and see their attorney.

Q. What happened then?

A. I proceeded to work and went over and saw the Commander about it.

Q. You mean the United States Naval Commander? A. Yes.

Q. What was his name? A. Siebert.

Q. Was Mr. Taylor there when you saw Commander Siebert? A. No.

Q. What happened then, so far as Mr. Taylor, or your money, or your work was concerned?

A. I don't know who it was, but somebody arranged a meeting with the Commander afterward.

Q. Did you go to that meeting? A. Yes.

Q. Who was present?

A. Mr. Snyder, Mr. Brazier——

(Testimony of Andrew A. Pollia.)

Q. Who was Mr. Brazier?

A. He was a sort of a superintendent on the job for the Flotation Systems.

Q. Go ahead.

A. And Mr. Long, who was an inspector in the Naval District.

Q. And Mr. Taylor?

A. Mr. Taylor was not there, no.

Q. Mr. Taylor was not at the conversation, is that the idea? A. Yes.

Q. After you had this conversation what happened then?

A. Well, I felt that as long as I was not paid, I didn't want to do any more work.

Mr. Harloe: Just a minute. We move to strike out the answer as to what he felt.

The Court: What he felt may go out. [60]

Mr. Doyle: You cannot testify as to what your feelings were, or what happend. I am not trying to lead you, but you went back on the job, and you had a conversation, and irrespective of what happened at that conversation, what did you next do? What next developed about the work, or the payment of the money, in so far as direct contact with any of the Flotation Systems officials was concerned, or any of their members, or your attorney?

A. Well, the question arose as to the completion of the work. The work had to be completed. The Commander asked me if I was willing to give the Flotation a release so that they could complete the work, and it was agreed that the Flotation Systems

(Testimony of Andrew A. Pollia.)

was to draw up a satisfactory character of a release whereby I would release them and let them complete the work.

Q. Did you receive, ultimately, some kind of an agreement from the Flotation Systems, which, as far as you know, was prepared on behalf of the Flotation Systems, whereby you released the Flotation Systems? A. Yes.

Q. Do you know where that agreement came from? A. No, I do not.

Q. When you got the agreement, what did you do? A. I turned it over to my attorney.

Q. First of all, were you satisfied with the agreement—not the legal import of the agreement?

A. No, I was not.

Q. You turned it over to your attorney?

A. Yes.

Q. Who was he?

A. Mr. Theodore Tamba.

Q. Do not tell us what the conversation was with Mr. Tamba. What did Mr. Tamba do?

A. Mr. Tamba drew up an agreement.

Q. A counter-agreement, is that it?

A. Yes.

Q. What did you do with the counter-agreement, so-called?

A. I turned it over to Mr. Snyder.

Q. Where—at the office?

A. At the office, yes. [61]

Q. What happened to the counter-agreement?

(Testimony of Andrew A. Pollia.)

A. They did not accept that.

Q. By "they," whom do you mean?

A. Mr. Snyder said that the Flotation people would not accept it.

Q. What happened then?

A. I went back and reported to the Commander that we could not come to any agreement, and that I would proceed and complete the work.

Q. Did you proceed and complete the work?

A. Yes.

Q. You still have not been paid the money that was due you? A. That is right.

Q. What did you do then?

A. I completed all the work covered by the extra work orders and covered by the contract.

Q. When was the first time that you were informed by anybody on behalf of the Flotation Systems that the work as provided in Plaintiff's Exhibit 2, which was your letter to them on May 28, 1940 and their work order No. 1413, of July 1, 1941, which is confirming your letter to them—when was the first time that you heard from the Flotation Systems or anybody acting on their behalf that the work that you were to do was the work in the pits?

A. Not until after I presented the statement in the first part of September that covered the extra work orders.

Q. After you presented the statement in the first part of September they said they would send you up the money? A. Yes.

(Testimony of Andrew A. Pollia.)

Q. And Mr. Henry said he did not know he signed the contract? A. Yes.

Mr. Doyle: Mr. Harloe, would you please look through your file again for a statement which was sent by the witness to the Flotation Systems, dated August 29, 1940?

Mr. Harloe: I have that.

Mr. Doyle: Q. I will show you a letter on your stationery, [62] which is dated August 29, 1940. Do you recall that document? A. Yes.

Q. Before the recess there was a question about your getting some money, or about getting some extra work in the pits. Does that statement contain any charges for work in the pits on any extra work order?

Mr. Harloe: Just a minute. I have no objection to your leading the witness for the purpose of expedition, as I think we can get along much quicker, but I do object to your asking the witness what appears in the statement. The statement speaks for itself.

Mr. Doyle: All right. Mr. Harloe, have you the checks that constitute payment No. 2 in the sum of $4737.49?

Mr. Harloe: No, I have not got the checks. I have photostatic copies of them. Maybe the witness can identify the photostatic copies.

Mr. Doyle: Perhaps I can straighten it out. On this statement which you have in your hand there is an item there of $4737.49. Do you see that item?

(Testimony of Andrew A. Pollia.)

A. Yes.

Q. Was that an item of one payment, or were there various payments making that total?

A. This payment No. 2 consisted of a portion of the work under the contract, and extra work and rent of equipment.

The Court: That is not in answer to the question that was asked.

Mr. Doyle: Q. There were various checks issued for various work totaling $4737.49?

A. That is right.

Q. And the various checks that were issued totaling $4737.49 were for what? Was that for, as far as you know, work under the original contract, or for work covered by the extra work [63] orders that you received?

A. Well, it covered a little for extra work orders, and I had excavation equipment on the job that was working for me, which I, in turn, rented to them, plus work on the original contract.

Q. In other words, the $4737.49 covered obligations for work under the original contract, and also for work under the extra work orders, is that right?

A. Yes.

Q. And the work that was under the extra work orders, what did that cover?

A. That covered 32 wells on 6-inch pipe, 32 wells on 8-inch pipe inside of the pits.

Q. Inside of the pits? A. Yes.

Q. Extra welding of extra joints inside of the pits? A. Yes.

(Testimony of Andrew A. Pollia.)

Q. Was there any other question about the extra work that you did inside of the pits by welding the extra joints? A. No.

Q. You submitted a bill, and as a matter of fact you got paid for the extra work inside of the pits, did you? A. Yes.

Q. I will show you a letter from Flotation Systems, Inc., dated August 23, 1940, signed by Flotation Systems, Inc., by Arthur T. Snyder, Engineer, and addressed to you, and ask you to explain the circumstances of the issuance of that letter.

A. This letter was issued to cover extra work inside of the pits on a unit price basis.

Q. You testified to that before this morning's recess, about the unit price basis. Will you please explain that letter with reference to the unit price on extra work inside of the pit?

A. Certain work inside of the pit was being done by the Aqua Systems, and then it required bolting up the valves where the Aqua Systems terminated their work.

Q. Can you explain that a little bit more?

A. In other words, in each one of these pits there were two special valves manufactur- [64] ed by the Aqua Systems, which bolted onto the ends of the pipe in the tanks, and then from there some regular standard equipment, such as check valves, and elbows, flanged elbows, and they issued an order based on unit prices, bolting up 4-inch flange joints $2.50 apiece.

Q. As a result of special equipment of Aqua

(Testimony of Andrew A. Pollia.)

Systems, in order to connect it up you got that letter to do that work inside of the pit, and you did that?

A. Yes, covering that work inside of the pit.

Q. You did that under the extra work order?

A. Yes.

Mr. Doyle: I will ask that this letter be introduced in evidence next in order.

(The letter from Flotation Systems to Pollia dated August 23, 1940, was marked "Plaintiff's Exhibit 10.")

Mr. Doyle: I will ask that the letter of August 29, 1940 relative to the $4737.49 be introduced in evidence as Plaintiff's Exhibit next in order, also.

The Court: It may be admitted in evidence.

(The letter of August 29, 1940, from Pollia to Flotation Systems, was marked "Plaintiff's Exihibit 11.")

Mr. Doyle: Q. Mr. Pollia, pursuant to the bill of particulars that was delivered in response to the Defendants' demand the total bill was $26,908.70.

A. Yes.

Q. You received certain payments in the sum of $17,181.49, and under the original contract and extra work orders there is a balance due of $9,727.21? A. Yes.

Mr. Doyle: Take the witness.

Cross-Examination

Mr. Harloe: Q. Mr. Pollia, when did you first look at the plans and specifications for the doing of this work? [65]

(Testimony of Andrew A. Pollia.)

A. When I was preparing the bid.

Q. When you were preparing the bid?

A. Yes.

Q. You went over the plans and specifications—just look at these, will you, please, Mr. Pollia? Those were the specifications?

A. Those were the specifications.

Q. Will you identify those plans, if you will, as the plans that you examined for the doing of that work?

A. Those were the plans I checked.

Q. Did you also check up this one?

A. I just looked at this one.

The Court: You had better identify them.

Mr. Harloe: I will identify them. The first plan, No. 1210-43-4, had nothing to do with your work, did it? A. No.

Q. That had nothing to do with your work?

A. No.

Q. We will take that out. Plan 1210-43-3 is the plan for the pits, is it not? A. Yes.

Q. And plan 1210-43-5 is the outside piping?

A. Outside piping, yes.

Q. The piping of the tanks. This plan, here, 1210-43-3 shows certain fittings in the pits, doesn't it? A. It shows all special fittings in the pit.

Q. They show all of the fittings?

A. They show the different equipment in the pit.

Q. Special equipment to be placed in the pit?

A. Yes.

(Testimony of Andrew A. Pollia.)

Q. When you were asked to figure on this work you were asked to figure on the work of installing all of the pipe, weren't you?

A. I was asked to submit a bid to do all of the field piping.

Q. All of the pipe installation, all of the fittings? A. No.

Q. You say you were only asked to submit a bid for the field piping? A. Field piping.

Q. The plans for the pits and the plans for the field piping were [66] together, were they not?

A. I saw the plan for the field piping only—I saw the plan for the pit piping, but I was informed that was special equipment.

Q. You say you were informed it was special equipment? A. Yes.

Q. Isn't there a lot of standard equipment shown in there?

A. These are all valves made by the Aqua people, in every one of these pits.

Q. Answer my question, isn't there a lot of standard pipe equipment shown on these plans?

A. Inside of the pit?

Q. Yes. A. No, there is not.

Q. None, at all? A. No, there is not.

Q. There is no standard equipment shown in there at all?

Mr. Harloe: I will offer these plans and specifications in evidence as Defendants' Exhibit.

Mr. Doyle: Mr. Harloe, I do not believe he answered the last question.

(Testimony of Andrew A. Pollia.)

Mr. Harloe: I asked him if there was any standard equipment.

Mr. Doyle: You asked a question after that.

A. No, there is no standard equipment.

(The plans were marked "Defendants' Exhibit A.")

Mr. Harloe. Q. Mr. Pollia, you were on the location there prior to the submitting of the bid for the doing of this work? A. Yes.

Q. Whom did you first speak to relative to the doing of this work? A. Mr. Ceriat.

Q. You saw Mr. Ceriat? A. Yes.

Q. Did you and Mr. Ceriat examine the plans together at all? A. Yes.

Q. You did? A. Yes.

Q. That work that you did there, Mr. Pollia, would come under [67] the head of plumbing or pipe fitting—which one would it come under the head of?

A. It comes under the head of pipe fitting.

Q. It comes under the head of pipe fitting, all of the work there, that is relative to the pipes?

A. That had reference to the pipes.

Q. Let me ask this question: During all of the time you were there did you ever see any other pipe fitter, contract pipe fitter there besides yourself and the men employed by you? A. Yes.

Q. Who?

A. There was a Mr. Johnson, who was employed by the Aqua people as a pipe fitter.

(Testimony of Andrew A. Pollia.)

Q. That was Mr. Johnson. Did he do any work there? A. Yes.

Q. Did he do any work while you were there?

A. Yes.

Q. What work did he do?

A. He installed these special valves in these pits.

Q. These were where?

A. They are marked on the plan.

Q. They are special valves—they are a special article of the Aqua people, themselves, are they not?

A. Yes, I believe they are, I don't know, personally.

Q. In other words, they are special valves that are shown on these plans and specifications and they are the valves that the Aqua people put in?

A. Yes.

Q. Do you know who Mr. Johnson was working for, I mean what company he was connected with?

A. I understood he was working for the Aqua people.

Q. You understood he was working for the Aqua people? A. Yes.

Q. Mr. Pollia, in your contract, Exhibit No. 2 in evidence, the third paragraph calls for "Complete installation of a 12-inch terra cotta drain pipe."

A. Yes.

Q. You remember that, do you?

A. Yes. [68]

Q. That was changed, was it, Mr. Pollia?

A. Yes.

(Testimony of Andrew A. Pollia.)

Q. It was entirely omitted? A. Yes.

Q. And what was the amount decided on that you allowed for the omission of that article?

A. I believe it was $2300.

Q. $2300 for the omission of the terra cotta drain pipe? A. Yes.

Q. When you answered Mr. Doyle's question that you had completed all of this contract for the sum of $16,000, you did not remember that the entire drain pipe had been omitted at that time?

A. I knew the tile drain had been omitted. I answered the question that I completed the work covered by the contract, covered in my statement.

Q. This tile drain of $2300 was omitted?

A. Yes.

Q. Now, Mr. Pollia, you stated the first time that you remembered any question being raised with reference to whether or not you should do the work of installing the fittings in the pits was when you sent that letter of August 29th. Is that so? A. Yes.

Q. Prior to August 29th you had done considerable work in the pits, hadn't you? A. Yes.

Q. Now, this contract, you say, was actually typed up by Mr. Snyder. A. Yes.

Q. Had you had any conversation or any discussion with Mr. Snyder at that time with reference to what was to go into this contract?

A. Yes.

Q. Did you have any conversation or discus-

(Testimony of Andrew A. Pollia.)

sion with Mr. Snyder as to what—as to the agreement between you, as to what you should do and what you should not do?

A. Our understanding——

Q. I do not want any understanding, I ask you the question, did you have any conversation or discussion? A. Yes.

Q. Prior to the drawing up of this contract?

A. When it was being drawn. [69]

Q. Maybe you do not understand me. Your first negotiations for the purpose of submitting a bid were with Mr. Ceriat, were they not?

A. Yes.

Q. Did you have any agreement or conversation or discussion with Mr. Snyder with reference to submitting a bid? A. Yes.

Q. That was prior to the actual drawing up of this contract?

A. It was before; we came to an agreement and then that contract was drawn up, and it was satisfactory to me, and I signed it.

Q. I know, but what I am trying to get at is this, had you had any discussion with Snyder, as the representative of the Flotation Systems as to what you would and what you would not do?

A. I believe the contract states that.

Q. What I am asking you is, Mr. Snyder actually drew up this contract, actually typed it?

A. Yes.

Q. Did Mr. Snyder get the information from

(Testimony of Andrew A. Pollia.)

himself, or from you, with reference to what he put into this contract, or from Mr. Ceriat?

A. He got it from between us, when we discussed it, as to what we would do.

Q. Between whom?

A. Between himself and me.

Q. Mr. Snyder? A. Yes.

Q. What did you mean by this contract when you said, "Complete installation of all gasoline pipe as covered by plans accompanying specifications 9505"?

A. I mean that I will do the portion of the work that I later did.

Q. You mean that you would do that portion that you would do?

A. The portion of the work that should be done in accordance with the plans and the specifications.

Q. Now, that isn't the question I asked you.

A. That is what I mean when I say I will do the work in accordance with the specifications. [70]

Mr. Harloe: I move to strike that out as not responsive to the question.

Mr. Doyle: We object to the motion, I think it is very responsive.

Mr. Harloe: Q. I will read it to you again, Mr. Pollia: "Item 1: Complete installation of all gasoline pipe line as covered by plans accompanying specifications 9505," and I will ask you what that means.

A. Well, that paragraph, there, precedes what I intended to do.

(Testimony of Andrew A. Pollia.)

Q. That is not my question. Will you read it again?

(Question repeated by the reporter.)

A. That means the work following this paragraph, Item 1, I will do in accordance with the plans and specifications.

Q. That means in accordance with the plans and specifications? A. Yes.

Q. If that means that, why did you go on and say, "including necessary excavation"? That refers to the digging of the pits, doesn't it?

A. Yes.

Q. "—back-fill, replacement of red rock surface." A. Yes.

Q. What does that apply to, Mr. Pollia?

A. Well, at some places the position of the surface pavement had been disturbed, there, and we should replace it.

Q. In other words, there was a red rock surface on a roadway that had to be disturbed?

A. Yes.

Q. Where it had to be disturbed you would replace the surface of the road? A. Yes.

Q. "—welding and testing all joints, and all connections to pit boxes." If you were not to do any of the fittings in the pit boxes why didn't you mention it in the contract?

Mr. Doyle: Objected to as calling for the conclusion and [71] opinion of the witness, and also being argumentative.

(Testimony of Andrew A. Pollia.)

The Court: I will permit the question.

Mr. Harloe: I will go back first. All the fittings that were placed in the pit boxes were shown on the plans accompanying the specifications 9505, weren't they? A. That is right.

Q. They were all shown there? A. Yes.

Q. Will you read that first sentence again, please? A. Do you wish me to read it?

Q. Yes.

A. "Complete installation of all gasoline pipe line as covered by plans accompanying specifications 9505."

Q. "All gasoline pipe lines" shown by the plans accompanying the specifications 9505 show a lot of fittings in the pits, don't they?

A. Just a minute, this item 1, here——

Q. Just answer my question. The plans show fittings in the pits, don't they?

A. The pipe line plan does not show any fittings in the pit, now——

Q. Just a minute.

Mr. Doyle: Let the witness finish.

Mr. Harloe: He can answer "Yes" or "No." I want a direct answer.

The Court: Aren't the plans the best evidence of what they show?

Mr. Harloe: That is so.

Q. Don't these plans, Mr. Pollia, doesn't plan 1210-43-3 show fittings in the pits?

A. Yes, but Item 1 says the gasoline pipe line,

(Testimony of Andrew A. Pollia.)

Mr. Harloe. I agreed to install a gasoline pipe line.

Mr. Harloe: I move to strike out the answer as not responsive to any question.

Q. Now, after you stated, "Complete installation of all gasoline [72] pipe line as covered by plans accompanying specifications 9505," you also agreed to do certain other things? A. Yes.

Q. Which include "necessary excavations, back-fill, replacement of red rock surfacing, repairs to any existing roads, welding and testing all joints, and all connections to pit boxes." Isn't it a fact, Mr. Pollia, that all joints outside of pit boxes were buried in the ground or were to be buried in the ground? A. Yes.

Q. How deep were they to be buried in the ground?

A. There was nothing over 3 feet 6.

Q. They were approximately 3 feet 6, that they would be buried in the ground? A. Yes.

Q. Were those joints and connections to the pit boxes that were buried in the ground, welded and tested prior to the back-fill that you contracted to do?

A. We tested that work out in sections as we proceeded with the work.

Q. Then that would be before it was covered over, or back-filled, as you call it? A. Yes.

Q. Now, there was a Naval Inspector there during all of this work? A. Yes.

(Testimony of Andrew A. Pollia.)

Q. Mr. Leahy? A. Yes.

Q. He was present when the joints and fittings to the boxes were welded and tested prior to the filling of them up? A. Yes.

Q. Prior to the back-fill? A. Yes.

Q. Now, I show you this work order 273, that you testified to, and which was shown to you by Mr. Doyle, and 274, they are your Exhibits 3 and 4; they are for exactly the same work, aren't they?

A. I believe, as far as I remember, one of these orders was for Flotation Systems work for some other contract over there.

Q. These orders 273 and 274 were for the doing of some work that [73] had nothing to do with this contract of yours, at all, weren't they?

A. I think that you are confusing it.

Q. Just answer my question, that is all I want.

The Court: Read the question.

(Question read by the reporter.)

A. They did not have anything to do with the original contract.

Mr. Harloe: Q. They were not in the pits, either, were they?

A. I don't understand your question.

Q. Well, let us put it this way: Mr. Pollia, wasn't that for work to be done on some pits that were quite a ways away from where you were working? A. No, we were working close by.

Q. These work orders, 273 and 274, they were absolutely extra work, weren't they? A. Yes.

(Testimony of Andrew A. Pollia.)

Q. They were work to be put in by you on some fuel pits approximately half a mile from where these pits were? A. Yes.

Q. Now, this work order, Exhibit No. 8, dated 7/1/40, "To cover field pipe work as per contract of May 28, 1940, $16,040"—that is signed by whom?

A. It looks like Taylor.

Q. This was nothing more or less than a confirmation of your contract, was it?

A. That is right.

Q. It was a notice to go ahead and do the work? A. Yes.

Q. Now, you received a letter of August 7, 1940, Mr. Pollia, stating, "You are authorized to proceed with the following extra work in addition to that covered by our contract agreement dated May 28 at the unit prices shown below," and then the unit prices are stated. Now, "Install 2 additional 6-inch welding tees, 2 6-inch welding neck flanges" —they were not shown in the original plans but were on the revised plan, were they not?

A. I don't know.

Q. You don't know that? A. No. [74]

Q. Wasn't that the reason for giving you this work order?

A. Well, I just don't know how that would come about.

Q. I say you don't know?

A. It has been a year and a half since I did this work.

(Testimony of Andrew A. Pollia.)

Q. But you proceeded to do that work after you got that order? A. Yes.

Q. Now, you say you went to Los Angeles and submitted this letter of August 29? A. Yes.

Q. And you had a conversation there with Mr. Kalte, or Mr. Taylor, or Mr. Henry, was it?

A. Mr. Henry.

Q. Mr. Henry and yourself? A. Yes.

Q. And at that time you were given the $1000 that you testified to, and then you stated that the next day you were told—I do not want to misquote you—you were given $1000 there, and thereafter Mr. Henry or Mr. Taylor came to Alameda and spoke to you about this amount you demanded.

A. Mr. Kalte gave me $1000.

Q. There is Los Angeles?

A. In Los Angeles.

Q. And told you to come back?

A. And told me to come back next day and I would get the balance.

Q. Wait a minute, I know all that, but what I want to get at is, you got $1000 in Los Angeles, and then after a conversation you left and came back up to the job at Alameda? A. Yes.

Q. Now, who was it that came up from Los Angeles and spoke to you about this at the job?

A. Mr. Taylor.

Q. Mr. Taylor? A. Yes.

Q. And at that time Mr. Taylor told you that he had been informed that this work for the instal-

(Testimony of Andrew A. Pollia.)

lation of all the fittings in the pits was included in the original contract?

A. Not at our first meeting. [75]

Q. I did not ask you that. I will ask you this question, I will withdraw the first question and ask it over again: At the time Mr. Taylor came up to the job at Alameda after you had been to Los Angeles and left, Mr. Taylor told you that he understood the contract to mean that you were to do all the work in the pits, and that it was not extra work? A. No.

Q. What did he tell you?

A. He said he would let me know later about the payment.

Q. Then did he write you a letter?

A. No, he went across to San Francisco, I believe.

Q. Did he come back to Alameda and see you on the job? A. He came the same day.

Q. And he spoke to you on the job?

A. Yes.

Q. And then he told you that, did he?

A. It was at our second meeting that he told me.

Q. I don't care whether it was at the third or fourth, what I want to get at is, Mr. Pollia, that it was on the job at Alameda after you had been to Los Angeles that Mr. Taylor informed you that he believed that all of this work that you were

(Testimony of Andrew A. Pollia.)

demanding as extra, that is, fittings in the pits, was contained in the contract?

A. I don't understand the question.

Q. If you do not understand me I will try to make it clear. What I want to get at, Mr. Pollia, is, you had been to Los Angeles and had a conversation with different men down there.

A. Yes.

Q. You had received a check for $1000 and came back up here to the job? A. Yes.

Q. And then, after that, Mr. Taylor came up to the job? A. Yes.

Q. Now, during sometime while Mr. Taylor was up there on the job, at that time he told you that he believed or had been [76] informed that his contract provided that you should do all the work in the pits, didn't he? A. Yes.

The Court: I think at this time we will take our noon recess. We will meet at 2:30.

(A recess was here taken until 2:30 o'clock p. m.) [77]

Afternoon Session
2:30 o'Clock P. M.

ANDREW A. POLLIA,

Cross-Examination
(Resumed)

Mr. Harloe: Q. Mr. Pollia, I want to refer again to these extra work orders 273 and 274. Those were orders for doing work in what were known as the fueling pits? A. Yes.

Q. In your original negotiations with Mr. Ceriat, any work in the fueling pits was excepted, it was not put into your contract, was it—that was out?

A. Well, all work inside of the pits was out.

Q. That is what you say, but I am speaking of the fueling pits. In your original negotiations, prior to entering into the contract, in your negotiations with Mr. Ceriat, the fueling pits were excluded, weren't they?

A. Yes, they were excluded.

Q. Now, it is your understanding that all work in the pits was out, you had nothing to do with that, at all? A. Yes.

Q. We went down to Item 3, that was the tile drain pipe. The amount of $2300 in your contract was deducted for the omission of the tile drain, that is so, is it not? A. Yes.

Q. Mr. Pollia, if it was your interpretation that all work under this contract was excluded in the pits, how do you explain Item No. 4, "Paint-

(Testimony of Andrew A. Pollia.)

ing of all piping installed by us inside of pit boxes A,B, C, D and E"?

A. We got an order to test the pipe installed by us, and we had to make the flange connection at the pit, and it would not have been proper or workmanlike to make the connection outside of the pit, and we agreed to install that piece of pipe inside of the pit, and flange it off so we could test that section that was protruding inside of the pit, and we agreed to paint that. [78]

Q. That is your answer to painting of all piping inside of the pit boxes? A. Yes.

Q. Going back, so that there will be no question in regard to work orders 273 and 274, your contract provided for work in pit boxes A, B, C, D and E, that is correct? A. The connections.

Q. Regardless of that, your contract only mentions those pit boxes? A. Yes.

Q. The work mentioned in 273 and 274 was for Pit F, wasn't it? A. Yes.

Q. So they were not in this contract, at all?

A. No.

Q. That was entirely extra work that they had to do? A. Yes.

Q. Do I understand you to testify that you completed the work under 273 and 274?

A. I completed 273, and then notified Mr. Snyder when they received the equipment, such as meters, etc.——

Q. In other words, Mr. Pollia——

(Testimony of Andrew A. Pollia.)

A. I would like to complete the answer.

Q. Pardon me.

A. They were to furnish all the material required to do the work in the fueling pits, and at the time that we were doing the work in 274 the material was not there.

Q. That was principally what was called hose reels, was it not?

A. Hose reels, meters, all kinds of special equipment. They never let me know anything about it, and that is why I did not get over to complete 274.

Q. You mean they did not notify you of the arrival of that material? A. That is right.

Q. But, nevertheless, you made a charge for the doing of that work, didn't you?

A. I do not believe I did.

Q. Didn't you? A. No, I do not think so.

Q. Now, you mentioned that you had a meeting at the Commander's office with respect to this work. Was not that meeting at [79] the Commander's office by reason of labor difficulties, Mr. Pollia? A. No.

Q. It was not? A. No.

Q. Hadn't a question arisen as to whether pipe fitters should do the work and you were requested to go ahead, and the reason for the request was so that men could be hired to do the work?

A. We had our own organization on the job at all times.

Q. Just answer the question.

A. It was not so, no.

(Testimony of Andrew A. Pollia.)

Q. The meeting at the Commander's office had nothing to do with labor troubles, at all?

A. Not that I recall.

Q. You received a letter, didn't you, Mr. Pollia, from the Flotation Systems, demanding that you proceed with the work? A. Yes.

Q. And was it not by reason of that fact that a meeting subsequently occurred in the Commander's office?

A. A meeting occurred at the Commander's office? A meeting occurred at the Commander's office before that letter was written.

Q. Have you got that letter?

A. No, I have not.

Q. Do you remember the letter?

A. I do not remember the letter.

Q. Well, if I showed you this, would it refresh your memory? Pardon me, I will show it to Mr. Doyle.

Mr. Doyle: That is all right.

A. This is a copy of the letter I received.

Mr. Harloe: Q. That is the letter that you received. Now, that letter was written to you by the Flotation Systems, Mr. Pollia, by reason of the fact that the work was not progressing, was it not?

A. I don't know why it was written.

Q. What is that?

A. I don't know why it was written.

Q. You don't know why it was written?

A. No. I had six men on the job at all times.

[80]

(Testimony of Andrew A. Pollia.)

Q. Do you remember your testimony of the meeting on the job when Mrs. Snyder was present?

A. At which office?

Q. I mean the Flotation Systems office, or your work office over there on the job. You testified, if my memory serves me correctly, there was a meeting at the job site over there on an evening when Mrs. Snyder came over with Mr. Snyder, and Mrs. Snyder was at the office. A. Yes.

Q. That was prior to your going to Los Angeles, was it not? A. Yes.

Q. And at that meeting I understood you to say that Mr. Snyder made a list of what was done?

A. Yes.

Q. In other words, he made a tabulation, exact tabulation of all the work that was done in the pits? A. Yes.

Q. And this regardless of the fact whether you consider it in or out of your contract?

A. Yes.

Q. At that time Mr. Snyder made a tabulation of everything that had been done by you in the pits at that time, didn't he? A. Yes.

Q. Will you look over this and see if that is the tabulation as you remember it? Do not misunderstand me, I do not expect you to remember every item, or the amount of the items, but, generally speaking, is that the tabulation?

A. That is not the tabulation.

Q. That is not the tabulation? A. No.

(Testimony of Andrew A. Pollia.)

Q. Have you got the one that was made for you? A. I delivered it with my statement.

Q. You delivered it to Flotation Systems?

A. Yes.

Q. Was that tabulation in typewriting, or in longhand?

A. It was a typewritten tabulation.

Q. Mr. Pollia, do you remember about what date that was, that that [81] inventory was made? Your letter that you took to Los Angeles is dated August 29. Approximately how long before you went to Los Angeles was that tabulation made, if you remember?

A. I drove to Los Angeles that evening.

Q. You left immediately after the tabulation was made? A. Yes.

Q. This is dated September 7. Maybe the date is wrong.

A. This is not the tabulation.

Q. That is not the one I am trying to locate. I am trying to get the tabulation, the one that you got before you left. A. No, that is not it.

Q. None of these was the one? A. No.

Q. I will ask you whether that was the one that was made out. A. No, that is not.

Mr. Harloe: I think that is all.

Redirect Examination

Mr. Doyle: Q. Mr. Pollia, with reference to any plan that you were asked about, 1210-43-3, or your proposed contract, which is marked for iden-

(Testimony of Andrew A. Pollia.)

tification as Exhibit 1, and the ultimate contract, which is marked as Exhibit 2, and with reference to Exhibit 1 marked for identification, which you say was the one that was prepared by Flotation Systems, in which they use the words, "Including connections to the following number of pit boxes," and then your Exhibit 2, in which you use the words, or in which Mr. Snyder used the words, "and all connections to pit boxes," do you recall a conversation directed to that point, or any extra work order, and primarily with reference to some pipe wrapping that occurred in San Francisco subsequent to the time that Flotation first raised the contention that the work that you were doing over at the Base included all of the work in all of the pits? Do you remember that event? [82]

A. That occurred at Mr. Harloe's office.

Q. All right, who was there?

A. Mr. Tamba.

Q. Who is he?

A. He was an attorney who represented me at the time, at the time of the start of this litigation.

Q. There was a Mr. Tamba? A. Yes.

Q. Kalte?

A. Yes, Mr. Snyder and Mr. Harloe.

Q. What was the substance of that conversation?

A. The discussion started as to the work included in the pits, and Mr. Tamba told them it only included work to the pit and not inside of the pit.

(Testimony of Andrew A. Pollia.)

They dropped that subject and went on to some pipe wrapping I had furnished.

Q. What was said about the pipe wrapping?

A. Well, that my job that is covered there in the statement was some 1700 feet, and Mr. Snyder objected to the amount that I covered, and I understood him to say he was willing to take it up, and then he made a statement that the price was too high.

Q. What was the pipe wrapping?

A. I made the statement that—he asked me for a price to do the wrapping, and I gave him a price, and he submitted to me an order to proceed to wrap the pipe at so much a foot.

Mr. Doyle: That is all.

Recross Examination

Mr. Harloe: Q. Isn't it a fact at that meeting in my office the only conversation that took place between myself and Mr. Tamba, after the question was raised as to whether the contract provided for the doing of the work in the pits, that then the meeting adjourned, Mr. Tamba saying, "Well, we can't get anywhere," and we stopped?

A. No, I don't remember that.

Mr. Harloe: That is all.

Mr. Doyle: That is all. [83]

Mr. Stark: I think there are two or three questions that I would like to ask to develop from this witness the only point of the complaint in intervention that was denied by the Flotation Systems,

(Testimony of Andrew A. Pollia.)

and in order to save the possibility of my client, who has been here all day, waiting to go back to work, I would like to direct two or three questions to this witness out of order.

Mr. Harloe: That is perfectly agreeable to us.

Mr. Stark: Q. Mr. Pollia, on this Flotation Systems job you had a Northwest power shovel, did you not? A. Yes.

Q. From whom did you obtain that shovel?

A. I rented that from a concern named the Shanmac Company.

Q. A co-partnership consisting of Mr. Shannon and Mr. Mackie? A. That is right.

Q. You rented it on an hourly basis, did you not? A. Yes.

Q. I show you a statement dated August 1, 1940, and a statement dated August 22, 1940, showing a balance due on August 1 of $302.68, and on August 22nd of $746.05, making a total of $1048.63, and ask you if that is the charge for the use of that shovel? A. Yes.

Q. Has it ever been paid?

A. Not that I know of.

Q. You have never paid it?

A. No, I have never paid it.

Mr. Stark: We offer those in evidence as Intervenor's Exhibit 1.

(The statement of August 1, 1940 and August 22, 1940 are marked "Intervenor's Exhibit 1.")

(Testimony of Andrew A. Pollia.)

Mr. Harloe: One question, with reference to Mr. Shanmac's bill. All dealings with Mr. Shanmac were, he was your employee, Mr. Pollia?

A. Yes.

Q. You employed him and you paid him?

A. Yes.

Mr. Stark: He was not an employee. [84]

Mr. Harloe: Pardon me, I did not mean that.

Q. With reference to any work that was done by Shanmac Co., it was done under your authority and your direction, and not under the Flotation Systems? A. Yes.

Mr. Harloe: That is all, Mr. Pollia.

Mr. Doyle: That is all.

THEODORE TAMBA,

Called for the Plaintiff; Sworn.

Mr. Doyle: Q. What is your name?

A. Theodore Tamba.

Q. And your profession?

A. Attorney-at-Law.

Mr. Harloe: We will admit Mr. Tamba is properly qualified to and entitled to practice in all Federal courts.

Mr. Doyle: Thank you.

Q. Mr. Tamba, you are acquainted with a number of the parties and some of the matters involved in this litigation?

(Testimony of Theodore Tamba.)

A. Well, as I told you, Mr. Doyle, when you telephoned me, some of the documents and occurrences are a little hazy in my mind, but, generally, I think I am familiar with certain points at issue in 1940.

Q. Mr. Tamba, would you kindly testify as to a conversation that occurred at Mr. Harloe's office, in which Mr. Pollia, yourself, Mr. Kalte, Mr. Snyder, and Mr. Harloe were present?

A. I recall such a conversation, or a conference, I might say, in Mr. Harloe's office, the date or the time of which is a little hazy in my mind, I don't recall if it was 1940 or 1939, it seems to me as though it was in the morning, it might have been late in the morning or afternoon, or early afternoon, I went to Mr. Harloe's office with Mr. Pollia, whom I was representing at the time; I recall Mr. Harloe being present, and some [85] representative from the Flotation Systems, the name of the man is not clear to me at this time, and a man who was a foreman or superintendent for the Flotation Systems people also was present at that time, and a man I believe by the name of Snyder, you have mentioned the name to me over the telephon, and that seems to be the name. The purpose of this conference was to try to adjust a certain dispute which had arisen between Mr. Pollia and the Flotation Systems, regarding work done by Mr. Pollia on the Flotation contract at the Alameda Air Base. There was a complaint by Mr. Pollia to the effect that the Flotation had not

(Testimony of Theodore Tamba.)

paid him according to the contract, that is, the periodical payments, as they fell due; as to the amount of the payment I do not recall, but we went to Mr. Harloe's office and the first thing brought up, that is, the principal item of dispute was whether or not work done by Mr. Pollia inside of certain pits, which were receptacles for gasoline, was covered by the contract, or was covered by certain extra work orders. As I recall, the contract employed the language, "to the pits," and I took the position, with Mr. Pollia, that certain work was covered to the pits, that meant work up to the pits, and that the work inside of the pits was not covered by the original contract, and that was extra work, or additional work done under the terms of the contract, and that Mr. Pollia's position was further substantiated, not by the language of the contract, but by reason of the fact that certain extra work orders had been issued to do this work inside of the pits. Mr. Harloe and I could not come to any agreement as to that phase of the contract, and then there was some discussion about wrapping. I do not remember exactly the details, or the figures as to wrapping; I remember that Mr. Snyder, who was the foreman, [86] insisted Mr. Pollia did not do all of the required work in his claim against Flotation, and Mr. Pollia made the statement, "Do you want me to go further and take it up and show it to you?" And then something came up about Mr. Pollia charging too

(Testimony of Theodore Tamba.)

much for the wrapping, and Mr. Pollia said, "I submitted a figure to you and you accepted, and I did the work after you accepted my figure, and proceeded to finish the work," that is these wrappings, whatever they were. Then there was a discussion that Mr. Pollia complained about that because his payments were not forthcoming it had embarrassed him with his material men, he had not been able to make payments; that he made a trip to Los Angeles and received a payment on account; that he did not receive that payment, and had met with some of the officials, and the conference terminated at that point. That is my recollection, except that there was discussion between Mr. Harloe and me regarding the payment of certain claims which were made against the Flotation by reason of work furnished to Mr. Pollia by certain material men, and Mr. Harloe asked me in Mr. Pollia's presence if it would be all right to pay those claimants, or those material men, whoever they were, and I said that was agreeable, I think I asked Mr. Pollia at the time. Then there was some question about a shovel or piece of equipment, I do not recall who the material man was, or the claim, whether or not all of the work had gone into the Flotation project, or whether it had gone into some other project of the Central California project—I do not want to be bound by these names, because my memory is rather hazy about names; and Mr. Pollia was specifically asked if all

(Testimony of Theodore Tamba.)

of this work had gone into the Flotation job, and he said "Yes." He said the portion of the material *man* [87] that went into the other job was taken care of by the Central California Company. I think that some subsequent memorandum or agreement was submitted to me by Mr. Harloe, I have not seen it since the file was turned over to you. This statement which Mr. Harloe submitted to me I returned to Mr. Harloe and told him we could not sign in that form. In that way nothing was done regarding payment of these material men, as I recall, and that was the last I had to do with the case.

Q. Was there any conversation relative to the contract that was entered into on May 27, 1940?

A. There was a statement that considerable work was done by Mr. Pollia, that he had done this work and no question had been raised until Mr. Pollia had gone to Los Angeles in regard to that work, whether that was covered in the original contract, or not.

Mr. Doyle: That is all.

Cross Examination

Mr. Harloe: Q. In any event, Mr. Tamba, we arrived nowhere at an adjustment?

A. No. Mr. Harloe, you and I were at a very divergent point of view as to the merits of the case.

Mr. Harloe: That is all.

EUGENE CERIAT,

Called for the Plaintiff; Sworn.

Mr. Doyle: Q. What is your name, please?

A. Eugene Ceriat.

Q. And your residence?

A. 1220 South Lake street, Los Angeles.

Q. What is your occupation?

A. Construction work.

Q. How many years have you been so engaged?

A. 40 years.

Q. 40 years? A. Yes. [88]

Q. Are you a graduate of any institution having a study course of construction engineering?

A. Yes.

Q. Where? A. In Switzerland.

Q. When? A. In 1901.

Q. In the first part of 1940 were you employed by a concern in Los Angeles?

A. Yes, I was contracting with the Pacific Coast Lighterage Company.

Q. You were contracting with the Pacific Coast Lighterage Company? A. That is right.

Q. Was the Pacific Coast Lighterage Company connected with the Flotation Systems, Inc.?

A. I believe the president of the Pacific Coast Lighterage Company was the president of the Flotation Systems.

Q. You were acquainted, then, with Mr. Henry?

A. Yes.

Q. Do you know Mr. Kalte? A. Yes.

(Testimony of Eugene Ceriat.)

Q. Mr. Snyder? A. And Mr. Snyder.

Q. Is Mr. Kalte also a member of the organization, of the Pacific Coast Lighterage Company?

A. I know he is a member of the Flotation, and he was working with the Pacific Coast Lighterage Company.

Q. Now, as a matter of fact, the Pacific Coast Lighterage Company and the Flotation Systems, Inc. have the same business office in Los Angeles?

A. Correct.

Q. In the early part of 1940 were you engaged on a job for the Pacific Coast Lighterage Company at Manteca? A. Yes.

Q. That is down the Valley? A. Yes.

Q. While you were engaged on this job were you advised about the Flotation job at the Naval Base at Alameda?

A. I actually went to work for the Flotation, construction work.

Q. You received word, then, direct from the Flotation Company, [89] to make an estimate of the job that the Navy wanted done at its Base at Alameda? A. Yes.

Q. And you proceeded to Alameda to make that estimate?

A. Well, I went to Alameda to look at the ground, and I made the estimate in Los Angeles.

Q. And it finally developed that the Flotation Systems got the job? A. That is right.

Q. For a short period of time you were running

(Testimony of Eugene Ceriat.)

the job at Manteca, and you were also running the job at Alameda, were you? A. Yes.

Q. And finally you finished the job at Manteca and devoted your whole attention to the Alameda job? A. That is right.

Q. When you finally came up to the Alameda job and devoted all of your attention over there, what was the general nature of the contract that the Flotation Systems had with the Government?

A. To excavate and put the gasoline tanks underground, building the concrete supports for the tanks, pipe lines, concrete pits.

Q. I take it, then, that the Flotation Systems was engaged in all stages of this work at various times, is that right? A. Yes.

Q. And did your job in that Base finally reach the stage of construction where it became necessary to do the pipe installation? A. That is right.

Q. When your job reached that basis what did you do about obtaining some figure for pipe installation?

A. I had asked Mr. Pollia to make a water connection.

Q. That was just to make a water connection?

A. He was going to put in a water connection for another firm, and I asked him if we could get the water, and I asked him if he would give us [90] a price for the pipe work.

Q. What did he tell you?

A. He said he would be glad to.

(Testimony of Eugene Ceriat.)

Q. Did you get a price from anybody else on the pipe work?

A. Yes, I asked another contractor, I don't remember his name now.

Q. A man by the name of Tobin?

A. Yes.

Q. So you asked Tobin and Pollia for a price on the pipe work? A. Yes.

Q. Did you get a price from Tobin and Pollia?

A. Yes.

Q. When you got the price from Tobin and Pollia what did you do?

A. Well, I decided that Pollia would be a far better man, because Tobin was more of a clay pipe man, and if we brought another man on the job we would have work done by two sub-constractors, and then I thought Pollia would be the best man, because he was doing some work right close by there at the boathouse.

Q. When you finally got a figure from Mr. Pollia did you communicate that information to Los Angeles? A. Yes.

Q. What means did you take to communicate that knowledge to Los Angeles?

A. I think I sent a letter to Los Angeles asking if they would accept the bid. I explained the labor situation would be pretty hard here—I sent them a letter and they told me,—I got a letter back from Mr. Henry asking me to have Mr. Pollia draw a contract.

(Testimony of Eugene Ceriat.)

Q. You wrote down to the Flotation Systems office, and Mr. Henry, the president, wrote back to you and asked you to have Pollia draw a contract?

A. That is right.

Q. Did Mr. Pollia draw a contract?

A. I think he did.

Q. I will show you a document and ask you to look at that and see if that will refresh your memory. A. I think that is it. [91]

Q. That looks like the document that Mr. Pollia submitted in response to your request for an estimate or such a statement?

A. Yes, that is it.

Q. There is some longhand writing on that document.

A. That is in my own handwriting.

Q. The handwriting, longhand, on that letter of May 27, Plaintiff's Exhibit 1 For Identification, is in your handwriting? A. Yes.

Q. That was a document that Mr. Pollia sent in response to your suggestion and your instructions?

A. I don't know if it was the same document, I don't remember exactly, but there was some discussion between Pollia and the Flotation, I believe, at that time, and then Mr. Pollia and Mr. Snyder agreed together to a new agreement.

Q. Now, I will show you Plaintiff's Exhibit No. 2, and ask you to look at that for a moment.

A. Yes.

Q. That is the agreement? A. Yes.

(Testimony of Eugene Ceriat.)

Q. Did you participate in this discussion or this getting together between Mr. Pollia and Mr. Snyder as to this agreement? A. No.

Q. Were you present?

A. No, I was not present. We discussed the old agreement, and it seemed Mr. Pollia didn't agree to my agreement, so I left them to discuss it.

Q. Then this agreement, Plaintiff's Exhibit 2, was discussed between Mr. Snyder and Mr. Pollia?

A. Yes.

Q. And Plaintiff's Exhibit 1 For Identification was the agreement that was discussed between you and Mr. Pollia? A. Yes.

Q. Mr. Pollia and yourself did not agree about Plaintiff's Exhibit 1 For Identification?

A. No.

Q. You left the agreement up to Mr. Snyder and Mr. Pollia? A. Yes. [92]

Q. Which is in Plaintiff's Exhibit 2?

A. Yes.

Q. And when that agreement was finally reached, there is your signature on here, did you read this agreement over before you signed it?

A. I put my signature on there.

Q. That agreement was accepted by you 5/28/40? A. Yes.

Q. Before you signed this agreement, you had a title of construction engineer at the time?

A. My title was superintendent of construction.

(Testimony of Eugene Ceriat.)

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A. That is right.

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A. I put my signature on there.

Q. That agreement was accepted by you 5/28/40? A. Yes.

Q. Before you signed this agreement, you had a title of construction engineer at the time?

A. My title was superintendent of construction.

(Testimony of Eugene Ceriat.)

Q. You state in Item 2 that the work was to be done to pit boxes.

A. I read it carefully, but I did not go into the details, because it was the matter on which they agreed among themselves and it was satisfactory to me.

Q. In other words, then, Mr. Snyder and Mr. Pollia agreed upon what was to be done, and as far as your signature is concerned it was merely mechanical, and when they got together and drew up this agreement and said it was satisfactory to both of them you signed it?

A. I approved it, so we could forward it to Flotation Systems' office for signature.

Q. Did you send it to Los Angeles for signature?

A. I believe Mr. Snyder sent it.

Q. Are you familiar with the handwriting in ink, "O. K. James Henry"?

A. It looks very familiar to me.

Q. Who is James Q. Henry?

A. President of the Flotation Systems.

Q. While the agreement, Plaintiff's Exhibit 1 for Identification, or Plaintiff's Exhibit 2 in evidence were being discussed, was Mr. Pollia doing any work for the Flotation people at that time, or had he actually started to work?

A. I think he either started the same day or the day before, in preparing for the water line, if my memory is correct.

(Testimony of Eugene Ceriat.)

Q. In preparing for the water line, did he do any actual laying [93] of pipe or connecting of pipe underground for the purpose of connecting together of the system, over there, have it advanced to that stage? A. I do not think so.

Q. Did you finally receive some authorization from the Los Angeles office of Flotation Systems, permitting Mr. Pollia to go ahead?

A. As soon as we got the contract back.

Q. When you got the contract back, signed by Mr. Henry, you got the signature of Mr. Pollia, did you not? A. Yes.

Q. And you told him to go ahead?

A. Yes.

Q. And he went ahead on the job?

A. Yes.

Q. While he was doing this work over there, were you still engaged in doing that part of the job which was being undertaken by the Flotation Systems? A. Yes.

Q. And both of you continued along doing a part of your respective work, is that right?

A. Yes.

Q. There was some question about the availability of material, was there not?

A. Well, there was a little delay on different fittings.

Q. Who, incidentally, was to supply the material? A. The Flotation Systems.

Q. Do you know of your own personal knowl-

(Testimony of Eugene Ceriat.)

edge that Mr. Pollia was not able to progress with the work by reason of the fact that the material was not being delivered in time?

A. Yes. I made two trips to Los Angeles to find out if we were going to get the material, because Mr. Pollia was there on the work with the men, and when I returned I promised Mr. Pollia that the material would be there, and I think the material was delayed.

Q. You made two trips to Los Angeles on that matter? A. Yes.

Q. The agreement, Plaintiff's Exhibit 2, Items 1, 2, and 3, [94] the work to the pits, what type of work was inside of the pits?

A. Inside of the pit, if I remember correctly, it was primarily the work of the Aqua people, certain equipment that belonged to the Aqua, who were supposed to do the installation.

Q. In other words, the Aqua people had their own material and own equipment?

A. Certain part, yes.

Q. That work was done by the Aqua people?

A. Yes.

Q. Do you know of your own knowledge whether or not the Aqua people actually had some of the mechanics doing the work on the inside of the pits?

A. Yes, they had a man there; I don't know just when he started, but I would say about the middle of July, or maybe sooner, putting in some special equipment inside the tank, inside of the pit.

(Testimony of Eugene Ceriat.)

Q. Do you know, of your own knowledge, that the Aqua mechanic, or whatever his legal status was—do you know whether or not the Aqua people who were doing the work on the inside of the pit with their equipment, was the connecting up of the installation to the pit?

A. Well, it was connected with the installation of the pit.

Q. Who did the connecting up of the Aqua work, the Aqua man, or Mr. Pollia?

A. The Aqua man did some of the work.

Q. How many pits were there?

A. I think it was—if I saw the plans I could tell better. I will have to count them on the plan. We had sixteen pits, one on top of each tank, and then I believe there was a general pit connecting two tanks, which supplied two or four—it was eight on one side, sixteen, and they had three or four others.

Q. All these pits were dug out in the ground, were they? A. Yes.

Q. And at the bottom of the pit you put a large metal storage tank?

A. There were sixteen, they were on top, storage tanks. [95]

Q. Let us start at the very bottom. First of all, you had the storage tanks, is that right?

A. The steel tanks, 25,000-gallon steel tanks.

Q. Then on top of the steel tanks you had what?

A. A concrete pit.

(Testimony of Eugene Ceriat.)

Q. What did you have on top of the concrete pit? A. That is the tank with the cover.

Q. 25,000-gallon steel container or tank?

A. Gasoline tank.

Q. Which would be connected with some equipment or valve in the pit? A. Yes.

Q. On top of this pit was a spout of the automobile type? A. Yes.

Q. Then on top of the pit, on the surface of the ground, you had a cover?

A. A wood cover.

Q. What was the special equipment in the tank, itself, the equipment in this rectangular pit?

A. The tank, itself, and each side of the tank, there was special equipment installed by the Aqua people, and then it came up and connected inside of the pit.

Q. So the 25,000-gallon steel tank and all the equipment in the pit was all Aqua work, is that the idea? A. To install the tanks.

Q. And the connection of the work in the pit?

A. Special equipment, yes.

Mr. Doyle: Cross-examine.

Cross-Examination

Mr. Harloe: Q. About what percentage of the fittings in the pit was special equipment of the Aqua people, was it approximately a quarter, one-third, one-half, or what?

A. I could not tell you exactly, because I don't remember. [96]

(Testimony of Eugene Ceriat.)

Q. You don't remember? A. No.

Q. Now, then, Mr. Ceriat, let me ask you this question with reference to your negotiations with Mr. Pollia, for the purpose of having him enter into a contract, you had certain conversations with him and certain negotiations with him relative to a contract, didn't you, first?

A. Yes, checking the drawings.

Q. Checking the drawings and going over them to see what there was to be done, and then after that he gave you a figure? A. Yes.

Q. Thereafter you wrote to the Flotation Systems in Los Angeles, giving them the quotation, or what Mr. Pollia had agreed to do, didn't you?

A. No, first I sent a letter to Los Angeles, asking if they would be interested to take a bid.

Q. After all that had taken place, then you and Mr. Pollia took the plans and specifications, and Mr. Pollia gave you a figure as to what he would do it for?

A. Mr. Henry wrote me a letter for Pollia to submit a price, and when he submitted me that price I checked it, and I wrote out the form of the bid, and it seems we did not get together.

Q. I do not think I make myself clear. After all of that was done, Mr. Ceriat, then Mr. Pollia and you did check over the work that was to be done, and Mr. Pollia said, "I will do it for so much," did he?

A. Well, we checked exactly what work was to be done with Mr. Snyder.

(Testimony of Eugene Ceriat.)

Q. But, in any event, on May 23 you did write to the Flotation Systems in Los Angeles, didn't you? A. Right.

Q. Is this the letter that you wrote with reference to that? A. Yes.

Q. That is the letter that you wrote to them?

A. Yes.

The Court: We will take our ten-minute recess.

(After recess.) [97]

Mr. Doyle: Q. Mr. Ceriat, Mr. Harloe wants to interrogate you about a letter here which is dated May 23, 1940. Is that a letter that you had something to do with, or wrote to the Flotation Systems? A. Yes.

Q. Is that your signature? A. Yes.

Q. Is there any other signature appearing on there? A. No.

Q. There is nothing on there which shows Mr. Pollia's signature?

A. No, that is my proposal, I sent over to the Flotation.

Q. That has nothing to do with Mr. Pollia. That is the proposition that you wrote to Flotation to have Mr. Pollia accept? A. Yes.

Q. Mr. Pollia would not accept it?

A. I sent them this letter, and then when they answered me they said to have Mr. Pollia draw the contract, and this is the one I sent down to Los Angeles.

Mr. Harloe: Q. Mr. Ceriat, up until the time

(Testimony of Eugene Ceriat.)

that you wrote this letter to Flotation Systems and sent it to Los Angeles, you had been negotiating with Mr. Pollia for this contract, hadn't you?

A. We had been discussing it.

Q. At that time had you discussed the question of installing equipment in the pits with Mr. Pollia?

Mr. Doyle: Just a minute. At this time the plaintiff will object, upon the ground that the document upon which the witness is being interrogated is dated May 23, 1940, and was a document which was transmitted by this gentleman to his employer at Los Angeles. There is nothing in the document to show that Mr. Pollia had any knowledge of it, or that he was bound by it, or participated in it, and on the contrary, the evidence shows he did not accept it.

The Court: This question is directed to whether he did have any conversation. [98]

Mr. Harloe: That is correct.

Mr. Doyle: We object to it as being immaterial, irrelevant and incompetent.

The Court: For the present I will permit that question subject to the objection. You can renew that objection later.

Mr. Harloe: Will you read the question?

(Question read.)

Q. Do you understand that question, Mr. Ceriat?

A. I would say no, because I am proposing the contract.

(Testimony of Eugene Ceriat.)

Q. What I am trying to get at, Mr. Ceriat, is, you suggest in this letter that Mr. Pollia proposed to do this work.

A. Well, I should say I proposed to have Pollia accept that contract.

Q. You proposed to have Pollia accept that contract? A. Yes.

Q. After you sent this letter to Flotation Systems they wrote you a letter about it, didn't they?

A. Yes.

Q. Do you remember what that letter said?

A. I believe Mr. Henry wrote me a letter and asked me to have Mr. Pollia draw a contract acceptable to him.

Q. I show you a letter here for the purpose of refreshing your memory, Mr. Ceriat. You had more than one bid from Mr. Pollia, didn't you?

A. Well, I don't remember.

Q. Do you remember whether or not he had made an offer which was not acceptable, and then he made a subsequent offer, or another offer?

A. There were two or three discussions.

The Court: The question was about an offer, and the answer referred to discussions. Do you want an answer to the question?

Mr. Harloe: Q. Do you remember whether or not there was more than one offer by Mr. Pollia?

A. No, I don't remember.

Q. You don't remember? A. No. [99]

(Testimony of Eugene Ceriat.)

Q. Do you remember writing this letter to Flotation Systems? Does that refresh your memory?

A. Yes. "We have just received another bid from Mr. Pollia, who gave us the previous bid of 89 cents per foot for laying all gasoline and water lines."

Q. Does that refresh your memory as to whether or not you had more than one bid by Mr. Pollia?

A. Well, it would probably be in one bid, but a correction on a bid.

Q. A correction on a bid?

A. I would say that, myself.

Q. After this letter you received a reply from Flotation Systems with reference to this letter, did you, Mr. Ceriat? A. Yes.

Q. Do you remember what that reply was? Does that refresh your recollection?

A. The reply seems to be from Kalte, of the Flotation Systems. I thought it was Jim Henry that replied, because usually——

Q. Never mind about usually. I don't want the record to show what usually was done. This letter refreshes your memory, does it?

A. Yes.

Q. After you received this letter from Flotation Systems, did you again take the matter up with Mr. Pollia?

A. Well, I think Mr. Pollia and Mr. Snyder——

Q. Never mind that. Did you again negotiate with Mr. Pollia? A. I do not think so.

(Testimony of Eugene Ceriat.)

Q. You do not think so? A. No.

Q. Not after receiving this letter?

A. I don't remember.

Q. You don't remember whether you did, or not? A. No.

Q. Now, were you present when this contract was drawn up?

A. At the final contract I was not present.

Q. At the final contract, you were not present when that was drawn up? A. No.

Mr. Harloe: If your Honor please, I will offer these two [100] letters in evidence and ask that they be admitted as defendants' exhibits next in order.

Mr. Doyle: To which the plaintiff renews the objection on the ground stated, and on the additional ground the witness' testimony, so far as these two letters are concerned, they are purely between this witness and his employer, at Los Angeles, and not in any way binding on the plaintiff, who had no knowledge of them, and did not participate in them.

The Court: For the present they may be marked for identification and we will take the legal matter up later.

(The letter from Eugene Ceriat to Flotation Systems, dated May 23, 1940, was marked "Defendants' Exhibit B for Identification.")

(The letter from F. E. Kalte, dated May 24, 1940, is marked "Defendants' Exhibit C for Identification.")

(Testimony of Eugene Ceriat.)

Mr. Harloe: That is all.

Redirect Examination

Mr. Doyle: Q. I neglected to ask you on direct examination, after Mr. Pollia commenced work on Plaintiff's Exhibit 2, which was an agreement finally exchanged on May 28, 1940, there were extra work orders issued. Were you familiar with the fact that there were extra work orders issued?

A. How do you mean?

Q. Mr. Pollia finally gave you this agreement of May 28, 1940, which is marked Plaintiff's Exhibit 2. A. Yes.

Q. Which you approved, and which Mr. Henry O.K'd. A. Yes.

Q. After that agreement, is it not a fact of your own knowledge, that you know, that the Flotation Systems issued a number of extra work orders on the job over there?

A. I think I signed one or two, myself.

Q. I see you signed one, No. 280. Did you see these extra work [101] orders as they came in, or did they come in through you, or were they given directly to Mr. Pollia?

A. The one that I signed came through me; the others did not.

Recross Examination

Mr. Harloe: Q. Mr. Ceriat, during the time of these negotiations with Mr. Pollia with reference to the work, you were the one in charge representing the Flotation Systems, weren't you?

(Testimony of Eugene Ceriat.)

A. I was supposed to be, yes.

Q. You were supposed to be the man in charge?

A. Yes.

Q. And all of these communications from Flotation Systems, and in answer to your letter, were addressed to you?

A. They came to the office.

Q. They came to the office addressed to you, and you were the man in charge there?

A. Well, I was the man in charge of the job, yes.

Mr. Harloe: That is all. No further questions.

Mr. Doyle: That is Plaintiff's case, your Honor.

Mr. Stark: So far as my people are concerned, I have only the presentation of one document, Mr. Harloe. You have an original letter in your file of October 29, 1940, addressed from my firm to you?

Mr. Harloe: I think I have.

Mr. Stark: You recall that that letter that you were willing to stipulate that this is a copy of it and I could use a copy?

Mr. Harloe: I think I have the original. What is the date?

Mr. Stark: October 29, 1940.

Mr. Harloe: Yes.

Mr. Stark: The intervenor wishes to offer in evidence, if your Honor please, a letter dated October 29, 1940, addressed [102] to Mr. Harloe, by myself, representing Shanmac Company, a copartnership, which will complete the intervenor's case.

(Testimony of Eugene Ceriat.)

(The letter of Charles M. Stark to John Harloe, dated October 29, 1940, was marked "Intervenor's Exhibit 2.")

Mr. Harloe: Mr. Stark, have you any objection to my putting in evidence my letter to you dated November 15, 1940?

Mr. Stark: No.

Mr. Harloe: Have you the original?

Mr. Stark: Yes.

Mr. Harloe: I will offer in evidence, with reference to the Intervenor case, the letter of mine to Charles M. Stark dated November 15, 1940.

The Court: It may be admitted.

(The letter was marked "Defendants' Exhibit D.")

Mr. Doyle: I do not presume that the stipulation between Mr. Stark and yourself about the items involved in the complaint in intervention in any way involves the plaintiff?

Mr. Harloe: No, that is between Mr. Stark and I.

EDWARD C. SEYMOUR,

Called for the Defendants; Sworn.

Mr. Harloe: Q. Your residence, Mr. Seymour, is what?

A. 136 North Deer Drive, Los Angeles.

Q. And your business or occupation?

(Testimony of Edward C. Seymour.)

A. Manufacturer and contractor.

Q. Of what products?

A. Of bitumen products.

Q. One of your products is the wrapping of pipe? A. Yes.

Q. Now, you are familiar with the Alameda Airport Job? A. Yes.

Q. You were there on the job at times?

A. Yes.

Q. Now, you furnished the pipe or wrappings of the pipe for that [103] job?

A. I furnished the wrapping machine and the labor and the material for wrapping the pipe.

Q. And wrapping of pipe? A. Yes.

Q. And you wrapped the pipe under inspection by the Naval authorities, did you, Mr. Seymour?

A. Yes.

Q. After you wrapped the pipe what did you do with it?

A. We stacked it in a stock pile.

Q. Did you see any of that pipe being installed in the trenches? A. No.

Q. Mr. Seymour, do you know how many feet of pipe you wrapped, approximately?

A. Well, I could not be quite sure, it would be an estimate, I would say about between 9000 and 10,000 feet.

Q. Now, then, Mr. Seymour, you saw that pipe wrapped. The specifications called for it to be wrapped in a certain manner, did they not?

(Testimony of Edward C. Seymour.)

A. Yes.

Q. And you did wrap it according to those specifications? A. Yes.

Q. Will you just give us now, briefly and quickly, what the wrapping consisted of?

A. It had to be sand blasted and then it had to be primed with a coal tar, then it had to receive two coats of coal tar enamel, and then there was a 15-pound wrapping of coal tar straight asbestos felt.

Q. What do you mean by 15-pound wrapping, is that 15 pounds per foot?

A. No, that is a description of the weight per hundred square feet. The weight of the wrapping there was known as 15 pounds per hundred square feet. After that was applied then there was a final wrapping of Craft wrapping paper.

Q. Of Craft wrapping paper?

A. Just plain wrapping paper; that would be plain paper, I guess you would call it.

Q. In the handling of the pipe, generally speaking, what part of the wrapping would become bruised so that it would have to be [104] done over again?

A. Well, all machine-wrapped pipe, after it is wrapped, of course, has to be handled carefully; otherwise, damage to the wrapping will occur. The specifications on that job, as I recall them now, specifically covered that phase, that the pipes had to be handled by the contractor doing the laying

(Testimony of Edward C. Seymour.)

in such a manner that the wrapping was not injured.

Q. Now, if in the installation of that pipe in the trenches the pipe was dragged or battered about, would that wrapping have to be replaced or could that be patched?

Mr. Doyle: Objected to as being immaterial, irrelevant, and incompetent. The witness did not see the pipe being laid in the excavation, and how could he answer that question?

Mr. Harloe: I am just asking the question.

One of your items in the bill of particulars is patching of pipe.

The Court: I will allow the question subject to the objection.

A. Under normal procedure it should not be much of a job to patch it up, if it is cracked any place, it occurs quite frequently; all pipe line contractors are familiar with that, and it should not be much of a job patching up any fractures that are made in the wrapping. In these the particular specifications the Craft paper would probably be more damaged, which was the last portion of it, than anything else, because the specifications provided that—when I say "the specifications," I mean the Navy specifications—as I recall it provided for patching at intervals.

Q. What do you mean by that?

A. Normally we would stick the last coating of the paper tightly to the other felt wrapper, which I explained to you, and in these particular speci-

(Testimony of Edward C. Seymour.)

fications the Navy only wanted it at intervals. The principle [105] back of that was if the paper were loose the paper afforded some cleavage so that when the soil settled around it, instead of that loose layer of paper being an integral part of that coating, it was a loose wrapper, so that it would pull away when distorted the main part of the coating, or main part of the wrapping.

Q. That being so, it would take very little jar to tear part of that loose wrapping paper?

A. I would say so.

Q. Now, what would be the cost of replacing that last wrapping paper which you say was loose, as compared to the other factors going into the wrapping?

Mr. Doyle: Objected to as being immaterial, irrelevant, and incompetent. The second objection is that what the actual coat would be is not before the Court, because of the fact that there was a special order executed between the plaintiff and the defendant.

The Court: He may answer subject to the objection.

A. You mean what would be the cost of labor and material in replacing that?

Mr. Harloe: Q. No, just the outer paper.

A. It would be very small. Do you want me to guess at that approximate figure it might cost?

Q. I will withdraw that question and put it this way: The cost of the replacing or patching the

(Testimony of Edward C. Seymour.)

outer paper is a very nominal one, as compared with the wrapping? A. Very nominal.

Mr. Harloe: That is all.

Mr. Doyle: No questions.

The Court: We will take an adjournment now until tomorrow at 10:00 o'clock a. m.

(Adjournment to tomorrow, Wednesday, February 18, 1942, at 10:00 o'clock a. m.) [106]

Wednesday, February 18, 1942
10:00 o'Clock A.M.

The Court: You may proceed.

ARTHUR F. SNYDER,

Called for the Defendants; Sworn.

Mr. Harloe: Q. Mr. Snyder, what is your residence?

A. 5214 California street, San Francisco.

Q. You are in the employ of the Flotation Systems, Inc.? A. Yes.

Q. And have been for how long?

A. Since March, 1940.

Q. You were in their employ and on the job at the Alameda Airport?

A. Yes, during the entire time that the contract was in progress, under construction.

Q. When the work was under progress?

A. Yes.

(Testimony of Arthur F. Snyder.)

Q. Mr. Snyder, Plaintiff's Exhibit 2 in evidence is the contract on the letterhead of Andrew A. Pollia. I ask you to examine that. A. Yes.

Q. Did you actually type this contract?

A. Yes, I am quite sure that I did.

Q. You are quite sure that you typed the contract. At that time were you in charge of the work for the Flotation Systems? A. No, I was not.

Q. Who was? A. Mr. Eugene Ceriat.

Q. What was your official position at that time?

A. My official position was, that is, I was carried on the company's payroll as an engineer. However, that was at a time when I had just started employment with the Flotation Systems, I had just been employed for a month, or two months, and my duties were largely clerical at that time, because I was learning that [107] particular part of the business, you understand.

Q. At the time that this contract was drawn up, your actual duties at that time were practically clerical? A. That is right, yes.

Q. Now, with reference to the provisions of this contract with respect to the details of the different items, where did you obtain the information for the purpose of drawing up this contract?

A. Mr. Pollia brought a contract that he had written, himself, a proposed unsigned contract, and it was from that contract that we arrived at certain provisions.

Q. I show you Plaintiff's Exhibit No. 1 for Identification.

(Testimony of Arthur F. Snyder.)

A. Yes, I believe, I am quite sure that is the document from which the actual contract was drafted, after certain revisions were made.

Q. Did you have any negotiations with Mr. Pollia prior to the time that you received this draft of a contract from him, with reference to what should or should not be in the contract?

A. No, not at all.

Q. Do you remember who did for your company?

A. Yes, Mr. Ceriat and Mr. Pollia had been in conference with each other, and had had considerable discussion about the doing of the work.

Q. And from that discussion, then, you received this form of contract, Plaintiff's Exhibit 1 for Identification? A. That is right.

Q. Did you have anything to do with the changes from this draft to the contract that was drawn up?

A. Yes. As I recall, the three of us, Mr. Ceriat, Mr. Pollia, and myself, discussed the original contract, and as I recall the wording, the actual wording of the original, that is, Exhibit No. 1, did not suit me, and I suggested some revisions in the wording to make it [108] read better.

Q. Make it read better? A. Yes.

Q. After this contract, Plaintiff's Exhibit No. 2, was drawn, did you have anything to do with transmitting it to the head office at Los Angeles for signature by Flotation Systems?

(Testimony of Arthur F. Snyder.)

A. Yes. I typed Mr. Ceriat's letter of submission and sent it down, mailed it.

Q. Mailed it? A. Yes.

Q. Now, this contract was received, and Mr. Pollia commenced the operations called for under the contract?

A. Yes, very soon, either the day before or that day.

Q. Were you there continually from the commencement of the work by Mr. Pollia until the completion of the contract? A. I was.

Q. You were there every day?

A. Well, possibly I might not have worked on some Sundays, or Saturday afternoon I might not have been there.

Q. But most of the time, practically all of the time you were there? A. Yes.

Q. You saw Mr. Pollia doing this work?

A. Yes. I was there practically every bit of the time that his men were on the job.

Q. When was the first time, if you remember, that changes were made by the Navy authorities in charge for the doing of the work?

A. I don't remember the exact date, but it was probably soon after the start of the work; there were a great many changes involved in the job; the Navy changed the specifications, that is, their design on some of the pipe work, quite frequently, and all during the job there were additional work change orders from the Navy.

Q. I might start at the first change order that

(Testimony of Arthur F. Snyder.)

was received by you from the Navy; necessarily, you acquainted Mr. Pollia [109] with that change, did you not?

A. That is right, it was necessary to do so, because we had to revise our own plans and see that the work was done in accordance with the changes that were made.

Q. What did Mr. Pollia do, if anything, with reference to those changes?

A. Well, if the changes involved no additional work he did nothing but if the changes involved additional work, inside of the pits or elsewhere, he immediately demanded an order authorizing him to do this extra work not included in his contract.

Q. That was perfectly proper for him to do, with extra work, was it, Mr. Snyder?

A. Yes, it was, because at that time a number of these changes did involve extra work. Mr. Pollia made his original estimate from the original plans and specifications, and, naturally, if subsequent changes in the specifications involved more work he was entitled to extra pay for such extra work.

Q. I show you here Plaintiff's Exhibits No. 3 and No. 4, Order 273 and Order 274, and ask you to look at those and see if you know what they are.

A. Yes, these are in my handwriting. These are signed by Mr. Kalte. These are both orders for work to be done in certain fueling pits at the end of the gasoline line.

(Testimony of Arthur F. Snyder.)

Q. Were these fueling pits which these work orders cover in the original contract?

A. There was no mention made of these fueling pits in the original contract, no.

Q. The original contract called for pits A, B, C, D, and E. A. That is right.

Q. Now, in these work orders that I have just shown you, are those pits designated?

A. No, those are pits F.

Q. And these Orders 273 and 274 apply to work to be done in [110] pit F? A. That is right.

Q. And were not in the original contract?

A. That is right.

Q. And were necessarily extra?

A. That is right.

Q. You are familiar with these plans and specifications, are you, Mr. Snyder?

A. Yes, I was familiar with them.

Q. Do these plans and specifications show fittings to be installed in the pit?

A. This one sheet of the plans shows the layout of the pipe, and the other shows the detail of the fittings in the pits.

Q. In those pits the Aqua people were to install certain patent valves?

A. They were to install and did install certain patent valves in the pits.

Q. Approximately what amount of the fittings and installation in the pits was done by the Aqua people, what percentage would that be?

(Testimony of Arthur F. Snyder.)

A. Of course, it was be a little bit difficult, as you know, to say by way of money value what it is, but, generally speaking, I would say 50 per cent. of the equipment in the pits was Aqua patent equipment, 40 to 50 per cent.

Q. And the other 50 or 60 per cent. of the fittings that went into the pits, were they known, commonly known as standard fittings and pipe?

A. Absolutely, you can find them all in any pipe supply catalog.

Q. While you were on the job did you give Mr. Pollia any extra order, or any order, for the installation of those fittings in the pits? A. No.

Q. I am speaking now, and you are referring to those shown in the plans and specifications?

A. That is right.

Q. Whenever any change was made by the Navy Department for the installation of those fittings in the pits, you did give Mr. Pollia a work order?

A. That is correct, whenever anything [111] came up, any work not covered by the original plans and specifications, we did give orders covering that extra work involved by the changes involved.

Q. Did Mr. Pollia install any fittings in the pits before any change took place?

A. You mean before any of these changes from the Navy took place?

Q. Yes.

A. I am reasonably sure that he did. Of course, the time element is a little bit difficult to recall.

Q. Well, let me put it this way: Was there ever

(Testimony of Arthur F. Snyder.)

any question raised by Mr. Pollia with you that he was not to install these standard fittings in the pits?

A. No, there was never any question raised during the first, let us say at least not during the first month of construction.

Q. Approximately what percentage of fittings in the pits had Mr. Pollia installed before he raised any question as to whether that was contained in his contract, or not?

A. Roughly speaking, I would estimate 80 per cent, that is, fittings in addition to those installed by the Aqua Company.

Q. That is what I mean, all my questions are along the line that those were fittings that the Aqua Company were to install. A. That is right.

Q. Those fittings were a patented article of their own make?

A. Yes, and they had an employee right on the job.

Q. And his name was Mr. Johnson?

A. That is right, O. H. Johnson.

Q. When was the first time that you knew that Mr. Pollia claimed that the installation of these fittings in the pits was not in his contract?

A. When Mr. Pollia submitted a bill at the field office at Alameda to Mr. Kalte, and we saw that he had listed on this bill itemized charges for work installing all [112] of these fittings in the pits, that is the first knowledge that I had that it was his intention to charge us for those fittings in the pits.

(Testimony of Arthur F. Snyder.)

Q. That bill was for fittings already installed, was it? A. Yes.

Q. Did he request from you any work order for the installation in those pits for which that bill was presented prior to the date of that statement?

A. Absolutely not, only for the changes that the Navy had made.

Q. Now, Mr. Snyder, you have seen the bill of particulars filed in this matter by Mr. Pollia?

A. Yes, I have.

Q. I gave you a copy of it.

A. At one time I had a copy of it. I do not believe I have a copy in my possession right now.

Q. I will give you another one. Have you a copy there, Mr. Doyle?

Mr. Doyle: Yes, I have a copy.

Mr. Harloe: Q. I hand you now what is a copy of the bill of particulars filed in this matter, and ask you to examine it, Mr. Snyder.

A. Yes.

Q. Now, after receiving that bill of particulars did you compile the data of the work that was done, and how it was done, with reference to that bill of particulars? A. I did.

Q. You compiled it, yourself?

A. Yes. I kept a rather complete record of all the transactions with regard to Mr. Pollia's contract, and from my record I compiled a complete record of things on each of these items that are on this bill of particulars.

(Testimony of Arthur F. Snyder.)

Q. I call your attention to the first item on the bill of particulars, "Extra—Wrapping joints and fittings as per agreement $663.60." Is that item correct?

A. Not quite according to my records. You might say substantially correct, but not quite. If I may refer to my records, I will. [113]

Q. These are the records that you compiled, yourself?

A. That is right. At one time on the job, I don't remember exactly when, Mr. Pollia and myself went over the plans, and we made notations regarding the number of joints that were wrapped, and from my records, extending them at the unit prices shown in the contract of Mr. Pollia, as I show it it is $657.67, instead of $663.60, just a minor difference there.

Q. Take the next item, "Welding joints."

A. I have nothing in my record to indicate why that should be charged for welding any joints, other than those covered by extra orders in subsequent items on this bill of particulars, as it was our understanding, and I believe it is plainly stated in the contract, that the laying of pipe and installing of pipe and fittings, etc., included the welding of the same. So, with regard to this item for welding joints, we have no knowledge of what that might constitute, or why that should be charged.

Q. In other words, in the first item, No. 1 of the contract, there is a clause, "Welding and testing all joints"?

(Testimony of Arthur F. Snyder.)

A. That is right, that is included in the contract. There were extra joints that were welded which are covered by subsequent items on this bill of particulars.

Q. Now, the next item is, "Rental of crane $8 per hour, $164."

A. My record shows that that crane was used 20½ hours, and it was my understanding with Mr. Pollia, and I do not believe I have a written agreement to that effect, but it was understood at the time that the rental of the crane was $7 an hour, and not $8.

Q. $7 and not $8?

A. Yes. Other than that, the item is substantially correct.

Q. Instead of $164, it should be $143.50?

A. That is correct, [114] according to my records.

Q. The next item is, "Rental of crane, $404."

A. The same thing applies to that.

Q. How many hours does it show for this rental from your records?

A. The bill of particulars did not state the number of hours, but my records show 50½, which we have calculated at $7 an hour, the extension of which was $353.50. It shows $404 on the bill of particulars.

Q. The next item on the bill of particulars is "Patch pipe wrapping, July and August, $1760." While you were on the job you necessarily saw the

(Testimony of Arthur F. Snyder.)

work that was going on, and the necessity of installing the pipe in the trenches? A. Yes.

Q. The contract provided that the Flotation Systems would furnish the material, most of it?

A. Yes.

Q. Practically all of it. And one of the provisions was that the Flotation Systems, itself, would wrap the pipe, or cause it to be wrapped?

A. I do not know whether there is anything that states that, but it was definitely understood by all parties that we would furnish the pipe wrapping.

Q. Furnish the pipe wrapping? A. Yes.

Q. You were there on the job and saw the pipe wrapping, did you? A. Yes, I did.

Q. Who wrapped the pipe?

A. Well, the Non-corrosive Products Company, of Huntington Park, wrapped it all under the supervision of Mr. Edward Seymour.

Q. Was all of the pipe furnished by the Flotation Systems under and pursuant to the contract wrapped by the Non-corrosive Products Company?

A. All except 120 feet of 4-inch pipe; we ran short of 4-inch pipe and I had to buy 120 feet locally, which was wrapped by Mr. Pollia. [115]

Q. And all of the other pipe, other than the 120 feet, was wrapped by the Non-corrosive Products Company?

A. Yes, all but 120 feet was wrapped by them.

Q. That came in a wrapped condition?

A. In a wrapped condition, and was carefully

(Testimony of Arthur F. Snyder.)

stacked in a stock pile at a central location on the job.

Q. Now, during any time that you were on the job, did Mr. Pollia request from you any order for wrapping any pipe other than the 120 feet that you spoke about?

A. Yes, at one time he did. He claimed at one time that he had found a few spots on this pipe—there was approximately 10,000 feet of pipe, and he found a few spots which had to be rewrapped. He said at the time that the paper had come off by the time he got the pipe to the trench.

Q. Let me understand you. You mean the outer coating of paper had been dislodged or bruised and it was necessary to wrap that?

A. As I recall it, yes. That was the only part of it wrapped, that was damaged, so that Mr. Pollia contended that it was not properly supplied by the Non-corrosive Products Company.

Q. Was there any time during the installation of this pipe by Mr. Pollia that any claim was made by him or that he called your attention to the fact that the wrapping of the—the felt wrapping and tar paper had been dislodged so that it had to be rewrapped?

A. Not that I recall. The only thing I can recall is his calling my attention to the condition of the paper on the outside of the pipe.

Q. Take the next item, "Patch pipe wrapping in September." Would that next item be the same

(Testimony of Arthur F. Snyder.)

as the item just before it in the bill of particulars?

A. Yes.

Q. Now, going back to this 120 feet of extra pipe that you had [116] to purchase and wrap, did Mr. Pollia, himself, wrap that pipe, or did he have it wrapped?

A. He engaged the A. R. Reid Company, of San Francisco, to come over and wrap it.

Q. You saw A. R. Reid Company on the job wrapping the pipe? A. Yes.

Q. Do you know what the cost of wrapping that 120 feet of pipe was?

A. I believe I have a notation on it, here—No, I do not have a segregation of that particular item. I did have this information.

Q. Let me ask you this question, do you know whether or not the Flotation Systems paid A. R. Reid Company directly for this work that they did for Pollia?

A. Yes, they did, because A. R. Reid Company requested us to pay them and deduct it from the money that was owing Mr. Pollia.

Q. And pursuant to the authority that I told you I had received from Mr. Theodore Tamba, who was representing Mr. Pollia at that time, you paid that bill? A. I requested them to pay it.

Q. It was paid, in the sum of $870.52?

A. $887.52.

Q. That is correct. A. Yes.

Q. Now, the next item is "Wrapping pipe, $36." That is Extra No. 7, you have it marked there.

(Testimony of Arthur F. Snyder.)

A. That item is correct.

Q. What was that for?

A. That was for the 120 feet of 4-inch pipe that I mentioned previously.

Q. The next item of the bill of particulars is, "Distributing gasoline and water piping, $375." Do you know what that is, or what it represented?

A. No, I do not understand why the company should be billed for that. The water pipe, which was cast iron pipe, was brought in by a trucking concern, which consented to lay the pipe, drop it, unload it at the side of the trench, right along where the trench was, or was to be dug, so nobody, Mr. Pollia nor anybody else, had to move that pipe; it [117] was laid right along the trench.

Q. They did have to move it to put in the trench?

A. But there was no distribution involved. The gasoline pipe, as I said before, was received from a railroad car, and was unloaded, and was wrapped by the Non-corrosive Products Company, and they, in turn, stacked it in a stock pile at a very central location on the job. I do not believe it could have been stacked at a place more convenient for a sub-contractor to use it.

Q. Let me ask you this question, Mr. Snyder, with reference to that item: Did Mr. Pollia at any time raise any question that he was not supposed to distribute that pipe from the place it was stacked by the Non-Corrosive Company?

A. No, I do not recall that he ever did.

(Testimony of Arthur F. Snyder.)

Q. Did he ever request an order from you to do that? A. No.

Q. Now, the next item is, "Installing temporary water line for testing," in the sum of $275.

A. I have nothing in my records on that item, at all. I have no record of having issued any order for any such testing line, and I believe you will find that our contract with Mr. Pollia states that he is to do the testing at his expense, and we had no knowledge why there should be a charge for testing.

Q. In other words, the testing and welding of all joints and connections to the pit boxes A, B, C, D, and E, could the joints be tested separate from the pipe line, itself, Mr. Snyder?

A. Not very well, no.

Q. In other words, after the line was laid, in order to test the joints it would be necessary to fill that entire line for the purpose of testing the joints, to see whether there was leakage, or not?

A. That is the only way I know of testing.

Q. For that item, "Installing temporary water line for testing" [118] did Mr. Pollia request an order from you? A. I have no record of it.

Q. Have you any recollection that he made a request to do that? A. None, whatever.

Q. The next item is, "Making test caps, $48."

A. Well, the same thing applies to that. We understood that the contract included testing, and, as I recall, any material that Mr. Pollia wanted we always supplied. He called on us on numerous

(Testimony of Arthur F. Snyder.)

occasions. I made special trips over to Oakland for material at his request, at such times as he stated he was ready to test pipe lines and needed certain material.

Q. When he made these test caps, was there anything said by him to you relative to getting test caps for him?

A. No, the testing was entirely up to him, as a part of his contract.

The Court: When you are speaking of testing, was that to satisfy your contract, that they were in accordance with the contract?

A. Well, more particularly, your Honor, to satisfy the Navy inspectors.

Q. The Navy inspectors were to be satisfied?

A. It was required, and, of course, we wanted a satisfactory job done, too, but primarily the testing had to be done to satisfy the Navy inspectors.

Q. That is what I wanted to find out, who had to be satisfied. A. Yes.

Mr. Harloe: Q. Your contract with the Government provided that this work would pass inspection by the Naval authorities?

A. Yes.

Q. As a matter of fact, it provided that it would be done under the supervision of and to the satisfaction of the supervising engineer of the Navy, there, did it not?

A. Yes, definitely. [119]

Q. The next item is, "Cutting and fitting water pipe."

(Testimony of Arthur F. Snyder.)

A. Well, in installing water pipes and in installing any water system, naturally the pipe must be cut and fitted. I am unable to understand why this item should be included in this bill of particulars, because I do not understand how anybody could take a contract to install a water pipe line anywhere without the same cutting and fitting of pipe.

Q. The necessity for cutting and fitting pipe is to make the length of pipe conform with the segregation that is called for, is it not?

A. That is right.

Q. In other words, Mr. Snyder, pipe is of standard length?

A. Standard length, or random lengths.

Q. And it is necessary in installing a water line, in order to make it comply with a certain requisite number of fittings, to cut some pipe to fit?

A. Yes. Naturally, the pipe had to be cut to the requisite length necessary to fit between Pits A and B, as you might see on the plans.

Q. The next item is, "Use of civil engineer, $25."

A. Well, that item is correct, except in regard to the amount. Mr. Pollia had a civil engineer on the job, or a transit man, as he classified him, doing some survey work in regard to the grading of the line, and we borrowed the services of this man on one occasion that I remember. The only thing I have on that is a pencil notation I made at one time, I asked Mr. Pollia how much we owed him in return for allowing us to use the services of his

(Testimony of Arthur F. Snyder.)

transit man, and he told me $4.35, as opposed to the $25 on the bill of particulars.

Q. The next item is, "Order 1215," that has been put in evidence in this matter.

A. Order 1215 is the item on the bill of particulars.

Q. I will show you this order, this is Plaintiff's Exhibit No. 7. [120]

A. Yes, I wrote this order.

Q. You wrote that order, yourself, did you?

A. Yes.

Q. Now, that Order 1215 is correct, is it?

A. Yes, the order is correct, but the amount on the bill of particulars, $241, should be $242. There was an error in computing the actual amount of that bill. It should be $242 instead of $241.

Mr. Harloe: May I make that notation right on the bill of particulars?

Mr. Doyle: No. I do not think you should make any notation on there, because the witness is testifying.

Mr. Harloe: It should be $242.

Mr. Doyle: In other words, your records show that order 1215 as charged for in the bill of particulars, $241, should be $242?

A. That is right. It was authorized and was done and the charge of $242 is correct.

Mr. Harloe: Q. Now, Order No. 273, $770. There is no specification or mention of order 274 in the bill of particulars, and I want to ask you relative to that work, Mr. Snyder. We have Order

(Testimony of Arthur F. Snyder.)

273 in the bill of particulars. Look at Orders 273 and 274, as I am going to ask you this question: Were they not considered practically the same order?

A. They are consecutively numbered, and they were issued at the same time, the difference being—this is rather a technical point, but they applied to two different contracts of ours. We had an additional contract over there for installing some equipment in some additional pits. 273 was on our original contract, and 274 covered the order on the subsequent contract we obtained from the Navy.

Q. The amount in the bill of particulars, Order 273, $770, that contemplates both 273 and 274, does it not?

A. No, it does [121] not. Our Order No. 273 calls for the installation of equipment in 10 fueling pits, and specifies $77 per pit, which makes $770, which would be correct if Mr. Pollia had done all of the work in those ten pits. The hose reels, which are part of the equipment which is put in these pits, was not available.

Q. What do you mean by "hose reel"?

A. The equipment to be installed in these pits, and as covered by these orders, included certain standard pipe fittings, elbows, flanges, valves, and so on, and in addition we had a patent valve, a special valve to gasoline meters, and two hose reels, the hose reel being a device by which gasoline hose was reeled up on a mechanical reel for holding the hose.

(Testimony of Arthur F. Snyder.)

Q. Those were not installed by Mr. Pollia?

A. No.

Q. Through no fault of his, though, was it?

A. No, through no fault of his; they were not available at the time he did the other work in the pit.

Q. And subsequently the installation of those hose reels was done by the Flotation Systems, and not by Mr. Pollia? A. It was.

Q. Now, you made a note there of the amount of deduction that should have been made in the $770 by reason of the non-installation of hose reels by Pollia, did you?

A. I kept a record of the cost that Flotation Systems was put to in putting in those hose reels, and on the basis of that cost I estimated that a fair charge for putting in those hose reels would be $10 per reel. There were two hose reels in each pit, that would be $20 per pit, and therefore a deduction of $200, which would bring the amount to $570, instead $770.

Q. Order No. 280, $165, that was for extra, wasn't that, Mr. Snyder? A. Yes.

Q. That is entirely correct?

A. Order No. 280? [122]

Q. I will give it you, Plaintiff's Exhibit No. 5.

A. Yes. That was a change made in the plans and specifications by the Navy, which involved some extra cast iron pipe line which Mr. Pollia installed. The item is entirely correct.

(Testimony of Arthur F. Snyder.)

Q. Now, Order 1207, $208, is in the same situation, is it not?

A. That I have not any record of, I do not just recall it.

Q. I will show you the order and it may refresh your memory, it is Plaintiff's Exhibit No. 7.

A. Yes, Mr. Pollia did that work, and it is entirely correct, $208.

Q. The next item on the bill of particulars is a letter dated August 23, 1940, $4903.20. Did you, from your records that you kept, make a detailed account and statement of the work done in the pits which you claimed were not in the original contract?

A. Yes, I kept a detailed record of all work, of all changes from the original plans and specifications, and all additional work that was caused by such changes.

Q. Now, then, what does your record show relative to the installation in the pits, other than those called for by the original plans and specifications?

A. I have that in some detail here in my records; shall I read it item by item?

Q. Yes, go right ahead.

A. In what was designated as A Pit, there were additional 6-inch flanged joints put in, not shown by the original plans. On the basis of the order issued to Mr. Pollia, he is entitled to $3.75. In the B Pit, one 6-inch bench weld at 88 cents, 2 4-inch bench welds at 63 cents, a total of $1.26; 2 6-inch field welds at $3.60 each, a total of $7.20. Now, in

(Testimony of Arthur F. Snyder.)

the C Pit, there were 16 of those pits, there were 48 additional 4-inch bench welds at 63 cents each, or a total of $30.24. The majority of the changes were in the D Pit. There [123] were eight of these pits. There were 32 additional 4-inch flange connections in these pits, which at $2.50 each would be $80. There were 40 4-inch bench welds to be made at 63 cents each, which comes to $25.20. There were 16 4-inch bench welds at 88 cents each, which comes to $14.08; 8 4-inch field welds at $3.60, which comes to $28.80, and 8 4-inch field welds at $1.75, which comes to $14. Now, then, in addition to that, in order to put this equipment on the tank and the openings in the tanks were not properly fitted for this patent equipment, it was necessary to do some welding on some nipples that were to go into these tanks, which Mr. Pollia did for us.

Q. You gave him an order for each of them?

A. Yes.

Q. That was considered extra?

A. That was considered extra, and is covered by one of these orders which authorizes him to do such extra work as authorized by us at such and such a unit price. Now, the amount on welding flanges for the storage tanks, 32 6-inch bench welds at 88 cents each, a total of $128.16, 32 8-inch at $1.13, total of $36.15.

Q. That totals up $269.73?

A. I do not have the total before me.

Q. These detailed amounts that you have just given us do not include the regular fittings, stand-

(Testimony of Arthur F. Snyder.)

ard fittings that show on the plans, and fittings which Mr. Pollia did place in the pits?

A. They do not show the fittings in the pits as indicated by the original plans, because it does not include the fittings as shown by the original plans which have been submitted to the Court.

Q. Now, with respect to the bill of particulars, the bill of particulars shows one payment of $7600, a second payment of $4737.49, payroll advanced $1544 on account of payment due 9/10/40 $1000, and omissions for tile drain $2300. The tile [124] drain was a change made by the Navy authorities, and was omitted? A. That is right.

Q. Who did agree upon the amount that would be credited the Flotation Systems for the amount of this tile drain?

A. I believe it is covered in the original contract that if the tile drain is to be omitted that the contract will be reduced by that amount. In addition, we gave him an order authorizing him to omit that; then we gave him a letter signed by both Mr. Pollia and ourselves—I have a copy of it somewhere——

Q. In any event, there is no question but what that figure of $2300 for the omission of the tile drain is correct?

A. No, there is no question about that particular item. There is about one of the other items, however.

Mr. Harloe: So that there will be no question about it, Mr. Doyle, I have been going over the items in

(Testimony of Arthur F. Snyder.)

the bill of particulars, and you have set forth a credit from the plaintiff as to the tile drain of $2300.

Mr. Doyle: Yes.

Mr. Harloe: So that this may be in the record, these figures that I have given, there, payment No. 1, payment No. 2, payroll advanced, on account of payment due 9/10/40, and omission for tile drain, make the total of $17,191.49, which the bill of particulars gives the company credit for.

Mr. Doyle: Yes.

Mr. Harloe: Now, payroll advances, which are shown at $1544, what should that be, from your records? A. $1634.55.

Q. That is shown by your records?

A. Yes.

Q. And that would make the total $17,274.04, instead of $17,191.49.

A. My mental arithmetic is not good enough to follow you. [125]

Q. That is a question of addition and subtraction.

The Court: I think this is a good time to take our recess of ten minutes.

(After recess:)

Mr. Harloe: Q. Mr. Snyder, at one time during the course of construction of this project there was a meeting held with the Commander of the United States Navy? A. Yes.

(Testimony of Arthur F. Snyder.)

Q. Do you remember approximately about what time that was?

Mr. Doyle: Just for the purpose of refreshing his memory, give him the date but do not give him the letter.

Mr. Harloe: Q. There was a letter written by Flotation Systems to Commander Siebert on the 17th of September, 1940. Does that refresh your memory with respect to that meeting?

A. Yes.

Q. Was that meeting held with reference to a dispute as to what work should be done, or was it held by reason of the fact that there was labor trouble?

A. It was held by reason of the fact that on the job, we were under a penalty with the Navy, and were unable to proceed on the job because of labor trouble.

Q. That letter was written and the meeting was held with Commander Siebert for the purpose of getting away from any penalty that might be imposed by reason of delay on the job?

Mr. Doyle: I object to the question as leading.

Mr. Harloe: Q. What was the reason of that meeting, Mr. Snyder? I withdraw the question and will put it this way: What gave rise to that meeting, and how was it brought about? Tell us about it.

A. Commander Siebert was in charge of the entire project, there, and the letter was written and the meeting was held as a last resort on our part,

(Testimony of Arthur F. Snyder.)

in an attempt to have some way to proceed with the work and to avoid further penalty [126] upon us. In other words, we thought that possibly we could get Commander Siebert to exert his influence to help us in this situation, where we were at a standstill.

Q. Was the standstill of the work, work that Mr. Pollia was doing?

Mr. Doyle: Objected to as leading and suggestive.

Mr. Harloe: Q. What work was stopped?

A. Mr. Pollia's work, the pipe-fitting work, he still had considerable pipe-fitting work to be done, the majority was done, but it was not completed, and we were unable to complete the pipe fitting work.

Q. Why?

A. Because Mr. Pollia did not have sufficient men on the job to do it, as we were getting nowhere, and there was no possible progress, and we were unable to hire pipe-fitters of our own, for the reason that the Central Labor Council, in Alameda County, refused to clear pipe fitters and pipe fitters' helpers to us as long as there was a dispute existing between our sub-contractor and ourselves.

Q. Had a dispute arisen between you and Mr. Pollia at that time?

A. Well, at that time this question had come up, Mr. Pollia had presented his bill for doing all of the work inside of the pits two weeks prior to

(Testimony of Arthur F. Snyder.)

that, we had not paid him for this, because we did not think he was entitled to it, and, therefore, there was a dispute.

Q. There was a dispute, and by reason of that dispute work had stopped?

A. Very nearly so.

Q. Then what did Flotation do?

A. We attempted to continue the work, we attempted to hire men through the Pipefitters and Steamfitters Local Union in Oakland to complete the work, ourselves.

Q. And being unable to do this, this meeting took place with Commander Siebert?

A. Yes, as a last resort. [127]

Q. The meeting with Commander Siebert was held only by reason of labor disputes?

A. Yes—it was held only because we were unable to proceed with the work and we were under penalty.

Q. These orders, most of them are in your handwriting, are they not?

A. Yes, most of them are.

Q. In these orders that were given to Mr. Pollia for the doing of extra work by him in the pit, the prices set forth in these orders were agreed upon between you and Mr. Pollia, were they not?

A. After a great deal of argument they were agreed upon; the Flotation Systems agreed to them because there was so little work to be done; we felt the price was exorbitant, but inasmuch as Mr. Pol-

(Testimony of Arthur F. Snyder.)

lia was on the job, and as we thought at that time these orders only covered minor changes as made by the Navy, we felt that we could stand these high prices for the limited amount of work that had to be done.

Q. Would you, as engineer in charge of the work, have agreed to all of the work in the pits at those prices? A. Absolutely not.

Mr. Doyle: Objected to as immaterial, irrelevant, and incompetent, entirely speculative.

The Court: I will let it stand.

Mr. Harloe: That is all.

Cross-Examination

Mr. Doyle: Q. Mr. Snyder, how long had you been at the Base before there was any agreement reduced to writing, either on May 27th or May 28th, 1940?

A. As I recall, I came on the Base on March 15; that would be two months and a half, wouldn't it?

Q. Approximately. Had you seen during your time at the Base these plans and specifications?

A. Yes.

Q. I understood you to testify before that you were very familiar with them.

A. Yes, I should be. I did considerable draft-
[128] ing and taking care of all of the revisions of the plans and changes, and so on.

Q. I do not want to hold you down, but you qualified your answer by saying you should be. As

(Testimony of Arthur F. Snyder.)

a matter of fact, you were very familiar with the plans and specifications, were you not?

A. Yes.

Q. You were right over at the Base prior to the time you ever saw Mr. Pollia around there, if you knew him by that name before? A. Yes.

Q. You were under Mr. Ceriat? A. Yes.

Q. Now, were you present at each time you ever heard, or did you ever participate in any conversation between Mr. Ceriat and Mr. Pollia with reference to the work, and to the letters of May 27th and 28th, Plaintiff's Exhibits 1 and 2?

A. Not until the time that I typed up the contract agreement.

Q. Now, the plans and specifications, that you were very familiar with, required your employer, the general contractor, to meet all the requisites that the Navy authorities incorporated in that contract, and anything they wanted done, isn't that correct? A. That is correct.

Q. When you and Mr. Pollia, and I believe you testified Mr. Ceriat got together on May 28th, did you read the letter that Mr. Pollia had submitted, which was dated May 27, 1940? A. Yes.

Q. You are a college graduate, I presume?

A. Yes.

Q. From what institution?

A. The University of California, 1933.

Q. And what did you get a degree in?

A. Electrical Engineering.

(Testimony of Arthur F. Snyder.)

Q. The agreement that Mr. Pollia submitted, Plaintiff's Exhibit 1, among other things, contained the following: "Including connections to the following number of pit boxes." And when you prepared this agreement, Plaintiff's Exhibit 2, the words, [129] "All connections to pit boxes"?

A. Yes.

Q. Do you recall going over that matter in connection with the plans and specifications?

A. No, I am quite sure we did not.

Q. There was some reference yesterday about a letter that Mr. Ceriat had written to Los Angeles, in which there was work discussed between Mr. Pollia and Mr. Ceriat on the job, over there, and that Mr. Pollia was not agreeable to the outline of the work set forth by Mr. Ceriat. Did you hear that testimony yesterday?

A. I heard the testimony, yes.

Q. Then you knew that there was some question in somebody else's mind about either the letter of May 27 or May 28?

A. I might say that I knew it yesterday, but I did not know it on May 28th, that there was.

Q. Then, as I understand it, on May 28, 1940, there was no question, at all, in anybody's mind but you knew all about the language "to the pit boxes"?

Mr. Harloe: Just a minute, I object to the question whether there was any question in anybody's mind.

Mr. Doyle: The question is, so far as he knew.

(Testimony of Arthur F. Snyder.)

A. No, there was no question about the interpretation of the contract at that time.

Q. Then you did know of your own knowledge that this contract of May 28, 1940, Plaintiff's Exhibit 2, was sent to your Los Angeles office, and in the ordinary course of business it came back?

A. Yes.

Q. And everything proceeded harmoniously between Mr. Pollia and the Flotation people up to a certain point, is that right?

A. No, everything at no time proceeded harmoniously on the job.

Q. Let me put the question this way, as long as you state things never progressed harmoniously on the job, did you ever have [130] occasion to check back through the records that you were maintaining as to the agreement between Mr. Pollia and Flotation Systems?

A. I had no occasion to check back on the wording of the contract, if that is what you mean.

Q. I will go further than that, did you ever have occasion to check your file at the office over there, or run through it?

A. No, not my file. The point of contention always involved changes that were brought up by the Navy, and as to who was to do the extra work that was involved by the different changes, and how much was to be paid for them.

Q. That was the reason for lack of harmony?

A. That was the reason for continual lack of harmony.

(Testimony of Arthur F. Snyder.)

Q. But outside of your answer just given, there was no lack of harmony, or any bickering, or suggestion of difference of opinion as to the wording of the contract of May 28th, 1940, until at quite some later date?

A. No, there was nothing ever came up regarding the wording of the contract until such time as we were presented with a bill wherein the work in the pits was listed in detail on the bill.

Q. Can you tell us approximately about when that was?

A. If my memory serves me right, that bill was submitted to us on August 29.

Q. 1940? A. 1940, yes.

Q. And that is the document that you itemized the night that Mrs. Snyder and yourself and Mr. Pollia were at your office?

A. About that time, yes. We did not itemize that document. We took an inventory of all work that Mr. Pollia had done on the job, it was not an itemization.

Q. For approximate purposes, it was about that time? A. It was about that time [131]

Q. When Mr. Pollia came over there to get an advance and you prepared this document, whatever it was, and he went down to Los Angeles?

A. Yes.

Q. And then is when the question arose?

A. Yes.

Q. And you think that was in the latter part of August, 1940? A. I think it was.

(Testimony of Arthur F. Snyder.)

Q. Now, I am not trying to hold you down, Mr. Snyder, but do you feel rather certain about the fact it was the latter part of August, 1940?

A. Well, that was two years ago, Mr. Doyle.

Q. That is the reason I asked the question.

A. I base my memory on going through my files, and I believe that the bill in question, as I recall, was submitted on August 29th.

Q. Thank you. Now, when was the first time that you knew there was any litigation as a result of this difference of opinion?

A. It was about the time that the suit was filed, I do not recall the date.

Q. All right, sir. And I presume that your superiors had discussed this difference of opinion, so-called, between yourself and Mr. Pollia, from August 29, 1940 until the time that the suit was filed?

Mr. Harloe: I think he should be asked whether he knew anything about it, or not.

Mr. Doyle: I will reframe the question.

The Court: Yes.

Mr. Doyle: Q. From August 29, 1940, it is a fact that there were some discussions with your superiors about this so-called difference of opinion?

A. Yes, at various times.

Q. Now, is it a fact that your superiors at any time told you that a suit had been filed in this matter?

A. No, I believe our attorney told me, I am not positive. [132]

Q. And your attorney subsequently obtained and

(Testimony of Arthur F. Snyder.)

gave you the date, personally, about it, and you ultimately received the bill of particulars that you have just testified to? A. Yes.

Q. Now, the file that you prepared, did you compile that from memory, documents and records, after you got the bill of particulars, or did you file that file in the state in which it is, prior to the time that you had received the bill of particulars?

A. No. The itemization I have here was compiled after I saw the bill of particulars, from data that I had obtained over the entire job, and prior to the receiving of the bill of particulars.

Q. There was a certain amount of data that was maintained in your files at the time by you, for that bill of particulars? A. No.

Q. I mean, there was a certain amount of data that was in your files, and when you got this bill of particulars you had to sit down and do a little concentrating and go over the situation and place the continuity of documents, and establish the file in the condition in which it is now, is that true?

A. Not necessarily. The file was kept in order pretty much so at all times. It was merely a matter of referring back to it.

Q. Then you made up the record that you have as to your opinion as to what transpired sometime subsequent to July 21, 1941, that is the date of the bill of particulars. If you do not understand, the record will show that the bill of particulars was furnished Mr. Harloe on July 21, 1941.

(Testimony of Arthur F. Snyder.)

A. I see.

Q. I take it, then, that the information that you have was gotten together or compiled subsequent to that date.

Mr. Harloe: Just a minute. I do not think that question is exactly fair to the witness.

Mr. Doyle: I will change the question. [133]

Mr. Harloe: Might I make this suggestion, there was a bill of particulars in another case, of which this is an exact duplicate, furnished to me quite sometime before the date you refer to.

Mr. Doyle: We will take that date.

Mr. Harloe: Yes, take that date.

Mr. Doyle: While I am looking for that, how many bills of particulars have you seen in this case?

A. Only one that I recall.

Q. The only bill of particulars that you recall having seen was that in July, 1941, or in October, 1940? A. October, 1940.

Q. So, then, some of the information in that file was gathered together and put in the condition which you have it now, from August 29, 1940 until subsequent to October 22, 1940? A. Yes.

Q. Now, have you in the record that you compiled a document that was asked for yesterday, and that is in relation to the sum of $4737? That amount was for original contract work, extra contract work, or payments on account of both?

A. Is that item on the bill of particulars?

Q. No, it is not. Yesterday I asked Mr. Harloe

(Testimony of Arthur F. Snyder.)

if he could get the statement in the sum of $4737 with reference to some payments, whether they were on account of the original contract, or extra work, or both, and Mr. Harloe later looked through the documents and said he could not find it. Do you recall that?

A. No. I have a record of the payment of that amount.

Q. I realize you have a record of the payment, but have you a copy of the statement?

A. Yes.

Q. Upon which those payments were based?

A. I have a copy of the statement dated August 1, 1940, in the total amount of $4737.49. [134]

Q. May I see it? A. Yes.

Q. That was the document that we were asking for yesterday. May I have that? A. Yes.

Q. Now, who prepared this document of August 1, 1940?

A. Well, that would be difficult to say.

Q. Let me change the question. I do not care so much for who made it. Who prepared it? Is that Mr. Pollia's signature?

A. That is his signature.

Q. That document has been in your file?

A. Yes.

Q. Is there any question in your mind but what that document pertains to the job?

A. No, there is no question, whatever.

Mr. Doyle: May I have this marked for identification, for the time being, your Honor?

(Testimony of Arthur F. Snyder.)

The Court: Yes.

(The estimate of partial payment dated August 1, 1940, by Andrew A. Pollia, is marked "Plaintiff's Exhibit 12 For Identification.")

Q. Now, Mr. Snyder, going back for a moment, when the document of May 28, 1940 was prepared, on direct examination you suggested that the wording of Mr. Pollia's letter of May 27, 1940, did not suit you, and you suggested some revision. You recall that? A. Yes.

Q. What were the revisions?

A. Oh, I don't recall that. I do recall that it was mainly the English, you might say, or the wording in certain cases. Might I explain at this time, in my capacity as a clerk I often did that for Mr. Ceriat, and he would accept my advice on the wording of certain letters or documents to be put in, and Mr. Ceriat referred it to me and asked me to read it over, and there were a few, some of the words that appeared at the time to be not quite exact, and I believe [135] I suggested that they change them, but just what they were I do not recall.

Q. As long as there was some revision made, or if there was some question about the English not being quite proper, or any other matter, it is fair to say that the contract was gone over fairly completely?

A. It was gone over completely, as far as technical wording of it is concerned. However, at that time I had no knowledge of what Mr. Pollia and

(Testimony of Arthur F. Snyder.)

Mr. Ceriat intended regarding the contract; they had not discussed it with me; I merely went over the contract with a view of checking the wording to see it read right.

Q. When you checked the contract that was finally made on May 28th, the wording, "to pit boxes" caused no reaction in you at all?

A. No, it caused no reaction, because I had no knowledge at that time whether Mr. Ceriat and Mr. Pollia had agreed between themselves that Mr. Pollia was to do work in the pits, or not.

Q. One other question on this subject: Upon reading the letter that Mr. Pollia had prepared on May 27th, when that said "to the pits," the wording of both documents is apparently similar and you let it go through. A. I copied it.

Q. As a matter of fact, Mr. Snyder, is it not true that Mr. Pollia had actually done several days' work that was covered by this agreement, Plaintiff's Exhibit 2, before the document was returned from your Los Angeles office?

A. He may have, I am not positive.

Q. You would not say that he did not?

A. No, I would not say that he had or that he had not.

Q. Now, are these the only plans that you have, by "you" I mean the Flotation Systems?

A. No, there were work profiles made of each one of these pit boxes and the equipment. [136]

Q. And the changes?

(Testimony of Arthur F. Snyder.)

A. And the changes as covered by various change orders from the Navy.

Q. Where are the plans involving the various changes subsequent to the plans that are in evidence here?

A. Well, the originals are in our office at Los Angeles. In my own file I do not have copies of those plans, I don't know whether Mr. Harloe has any, or not.

Q. Do the corrected plans, or amended plans, or the additional plans, whatever word you want to use, show the extra work that was to be done in the pits?

A. They show the work as it was actually installed, and by studying those plans and comparing them with the original specifications, an engineer, or anybody familiar with plans, could quite easily pick out the extra work that was involved.

Q. Now, when was it that the Navy first required or requested some changes with respect to the time that you gave Mr. Pollia his first extra work order?

A. I could only make an estimate on that, it would be a guess. I do not have my Navy file in my possession here.

Q. Let us look at this extra work order, and perhaps that will be of some assistance.

A. That would give an indication of when it was. I would like to look at a letter I have here in my file, if I may. It was sometime prior to August

(Testimony of Arthur F. Snyder.)

7, because on August 7 we wrote a letter to Mr. Pollia, authorizing him to do whatever welding in various pits was necessary, and complete this job in accordance with the revised drawings, and we set forth the price he was to be paid for that work.

Q. When you got some revised drawing in order to meet the requirements of the Navy changes, did you discuss the revised drawing with Mr. Pollia?

A. Yes. [137]

Q. And you gave him extra work orders for those changes, did you?

A. Yes. This letter that I have just looked over is in respect to the work orders covering that.

Q. And, of course, as to the revised plans, there was no question in your mind at that time that the revised plans were in addition to the original work under the original plans?

A. No, I would not say that. I would say that the extra work involved between the original plans and the revised plans was any work which was done as to entitle Mr. Pollia to additional payments for said extra work.

Q. Around August 7?

A. Prior to August 7, because this letter indicates we had the plans and were ready to proceed with the work on August 7, and, therefore, the revision must have been in our hands sometime before that.

Q. Was there any discussion between Mr. Pollia and yourself between May 28, 1940 and some date prior to August 7, about work in the pits?

(Testimony of Arthur F. Snyder.)

A. There was considerable discussion about extra work in the pits not covered by the original plans.

Q. I will broaden my question: Was there any discussion between May 28, 1940 and prior to August 7 about any work in the pits, either according to your contention under the original contract, or by reason of an extra work order?

A. Only on additional work that was not shown on the original plans.

Q. Did you use those words to Mr. Pollia, that whatever work he was doing in the pits was on the original plans, on his original agreement, not necessarily in those words, but did you use the substance of those words?

A. There was never any question about it; the question about the work in the pits, as shown by the original plans, had never come up at that time; there was nothing said about it. [138]

Q. Are you sure about that?

A. As near as I can remember, I have no recollection of it.

Q. Now, in this letter of August 1, 1940, Plaintiff's Exhibit 12, in the sum of $4737.49, is there any item specified in that letter which there was any conversation regarding between May 28, 1940 and August 1, 1940 as being extra work, and by "extra work" I mean work not according to your contention that Mr. Pollia was to do under the original contract?

A. Yes. On this estimate for partial payment

(Testimony of Arthur F. Snyder.)

are included, the first item, Extra for 32 wells on 6-inch pipe, for 32 wells on 8-inch pipe, which were made on the main storage tanks, which are unquestionably extra work.

Mr. Doyle: May I now have this letter of August 1, 1940 introduced in evidence?

The Court: It may be received.

(The letter of August 1, 1940, Estimate of partial payment, was marked "Plaintiff's Exhibit 12," in evidence.)

Mr. Doyle: Q. The work that is specified in the statement of August 1, 1940, was unquestionably for extra work in the pits? A. No.

Mr. Harloe: He did not testify to all of that.

Mr. Doyle: I will change my question. Withdraw that.

Q. Would you tell us, so that there will be no question about it,—will you please testify for the purpose of the record, in clarification of your previous answer, about some items not being under the original contract?

A. All right. We have extra for 32 wells on 6-inch pipe, 20 linear inches each at 4 cents per lineal inch, $25.60. We also have extra for 32 wells on 8-inch pipe, 26 lineal inches each at 4 cents per lineal inch, $33.28. Those were changes that were necessary in order to adapt the [139] steel storage tank to the use of the special Aqua equipment. Those are two items for extra work not covered in the original agreement with Mr. Pollia.

(Testimony of Arthur F. Snyder.)

Q. On that point, Mr. Snyder, isn't it a fact that the original plans and specifications called for welding of all work throughout the job?

A. No. Some of the fittings were welded shop fittings, which were welded, and some were flange fittings which were bolted together.

Q. Now, when the letter of August 1, 1940, Exhibit No. 12, was prepared covering this work, some extra work had already been done in the pits?

A. Not necessarily.

Q. Not necessarily. I will change my question. Isn't it true that when this letter of August 1, 1940 was prepared and checked by you, that extra work had already been done by Mr. Pollia in the pits?

A. No; extra work had been done by Mr. Pollia, but it was not done in the pits.

Q. Then I take it from your answer, when this letter of August 1, 1940 was prepared Mr. Pollia at that time had not done any extra work in the pits?

A. Let me explain what actually happened there.

The Court: I think you had better ask the question.

Mr. Doyle: Q. Is it not a fact, Mr. Snyder, that when this letter of August 1, 1940 was prepared, that Mr. Pollia had actually done extra work in the pit?

A. He had done extra work, but as to whether it would be considered to be in the pit, or not, is a matter of individual opinion.

(Testimony of Arthur F. Snyder.)

The Court: The question is, had he done it in the pit?

A. I can only answer that by saying "No."

Mr. Harloe: Explain your answer.

A. This particular work that he did on these two items was [140] some nipples that were welded, the work was done at the bench outside of the pits, and it was put in the pits later. The work was done at the bench, and taken down in the pit; it was for the pit, but it was not done in the pit.

Mr. Doyle: Q. Let me put it this way, in view of your last answer, it was work, then, that Mr. Pollia did for work that was to be done in the pits, is that what you mean?

A. Yes, I think that is correct.

Q. And the work that Mr. Pollia did, as you say, at the bench, that was for work in the pits, was extra work, but you are taking the position that he did not actually do it in the pits, is that right?

A. That is right; if I said that he did the work in the pit I would be stating a falsehood, because, technically, he did not.

Q. Then we come down to this situation, Mr. Snyder, that the contract of May 28, "up to the pit"—you are testifying now under the May 28 contract, "up to the pit," the mere fact that Mr. Pollia did the work at the bench was not extra work, when that work that he did, as you say, at the bench was for work that was to be done in the pit?

(Testimony of Arthur F. Snyder.)

Mr. Harloe: I object to that question.

The Court: I think the form of the question is objectionable.

Mr. Doyle: Q. Your idea, Mr. Snyder, is that any extra work that Mr. Pollia did relative to work in the pit was not actually work in the pit, because it was done on the bench?

A. No, this work not only was not done at the bench,—I mean this work was not only done at the bench instead of in the pit, but it was work for a very special purpose, it was work done because the tanks that were furnished us were not adapted to this special equipment and we had to make this revision for [141] the special equipment, which was to go in the pit and in the tanks.

Q. In view of your last answer, then, that there was some revision of the plans and specifications, and that required extra work orders——

Mr. Harloe: I think that both you and the witness are working at cross purposes. The witness has testified that the extra work, in fact, was no part of his work, but it was extra work done by Mr. Pollia by reason of the fact that the Aqua people's joints had to be rewelded in order to install them. You and the witness are working at cross purposes. If you ask him who was to install it, you might get at it quicker. I think the witness and you are working at cross purposes.

Mr. Doyle: All right, Mr. Harloe.

Q. Mr. Snyder, if there is any question that I

(Testimony of Arthur F. Snyder.)

ask you that you do not understand, it is your privilege to say you do not understand it. I do not want you to answer any question you do not understand. A. All right.

Q. Between May 28, 1940 and August 1, 1940, under Plaintiff's Exhibit 12 in evidence, Mr. Pollia did some extra work that was required of the Flotation people, as the general contractor, and for which work he received a special order.

A. That is correct, yes.

Q. And the extra work that Mr. Pollia did between May 28 and August 1, 1940, was for some kind of work for some kind of equipment, I do not care what it was, that was to be used in the pit.

A. It was an adaptation that was installed in the pit, yes—an adaptation to the tanks, I meant to say.

Q. And Mr. Pollia did not, according to you, make the adaptation or his men did not actually in the pit? A. That is right. [142]

Q. Your position is that as long as Mr. Pollia or his men did the work at the bench and not in the pit, that under the original contract of May 28, 1940 it was work under the original contract, is that right? A. No.

The Court: Isn't that calling for the opinion of the witness on the construction of the contract?

Mr. Doyle: I suppose, your Honor, it probably is, but I am trying to get on a common ground with the witness as to what he has in mind.

(Testimony of Arthur F. Snyder.)

Q. Let me put it this way: In any event, any work between May 28 and August 1, 1940, that Mr. Pollia did under an extra work order, that work was definitely put in the pit?

A. No, I do not believe that I could say that it was, because he did lots of work during the same period that was not put in the pit.

Q. A short time ago you said that there was some welding or some work that was necessary to make some connection with the Aqua equipment. Did you so testify? A. Yes.

Q. That is what I am talking about. Whatever work Mr. Pollia did with reference to this welding for the Aqua equipment between May 28, 1940 and August 1, 1940, included, in truth and in fact equipment that was put into the pit?

Mr. Harloe: Your question is too complex. The witness has testified that there are lots of other work that was not put into the pit.

Mr. Doyle: I will put it this way:

Q. Mr. Snyder, you used the word just a moment ago, "adaptation." A. Yes, to the tank.

Q. Now, we will meet upon a common ground. The adaptation that Mr. Pollia provided between May 28 and August 1, 1940 was actually [143] installed in the pit? A. Yes.

Q. And for those adaptations that were actually installed in the pit under this letter of August 1, 1940, your concern actually paid Mr. Pollia for that work, didn't it? A. That is right.

(Testimony of Arthur F. Snyder.)

The Court: I think this is a good time to take our noon recess.

(A recess was here taken until 2:00 o'clock p.m.) [144]

Afternoon Session
2:00 o'Clock P.M.

ARTHUR F. SNYDER,

Recalled;

Cross-Examination
(resumed)

Mr. Doyle: Q. Now, Mr. Snyder, you answered just before the recess that after this document of August 1, 1940, was prepared, that it was sent to the Los Angeles office of the Flotation Systems and paid?

A. I believe it was paid, yes.

Q. When you drew up the items contained in this letter of August 1, 1940, which was for the sum of $4737.49, that was for Mr. Pollia to get some money, is that right?

A. I cannot be positive that I drew up that document.

Q. Let me change the wording this way, then, if you are not positive that you drew up this document you were aware of the fact that there was such a document? A. Yes.

Q. And were you also aware of the fact that the document was going to go to the Los Angeles office? A. Yes.

(Testimony of Arthur F. Snyder.)

Q. And pretty near $5000 was involved?

A. That is right.

Q. Did you take any steps to communicate with your Los Angeles office as to whether or not any of the items contained in this letter of August 1, 1940 should not be paid to Mr. Pollia because it was work that he should have done under his original contract? A. I do not believe so.

Q. Now, before the 12 o'clock recess you spoke about a letter dated August 7. A. Yes.

Q. Have you got that letter?

Mr. Harloe: You have that letter. That was a letter written to your client. Haven't you got the original?

The Witness: The letter addressed to Mr. Pollia, is that the one you are referring to, August 7? [145]

Mr. Doyle: This morning we were talking about a letter of August 7. You said the letter of August 7 was a letter that you had written to your Los Angeles office, which resulted in extra work orders.

A. I am a little confused as to which letter we were referring to.

Q. I don't know, either, Mr. Snyder, and that is the reason I am asking you for it.

A. I do have a letter dated August 7, addressed to Mr. Pollia, authorizing him to do certain extra work at certain stipulated prices, but, as I recall the testimony this morning, it was from the date of this letter that I said there had been certain changes

(Testimony of Arthur F. Snyder.)

prior to that; otherwise, I would not have written the letter.

Q. I do not wish to see your entire file, but may I have that letter?

A. Yes. I believe you have a copy of it.

Q. Did you write two letters on August 7 to Mr. Pollia? A. I don't know.

Q. Well, I would like to show you Plaintiff's Exhibit 9, which is a letter dated August 7, 1940, and carbon of a letter of August 7, 1940 which you gave me, and you will observe that in the letter in evidence there are certain omissions on the original letter which occur on the carbon copy.

A. I see what you are referring to. How that came about is, perhaps I did not have a sufficient number of carbon copies and I typed up an additional number of copies. I think you will find the wording is the same, although they are not identical copies.

Q. I agree with you that the wording is the same, but you have attempted to make some extensions opposite the prices, and they do not appear upon the letter in evidence. A. Yes.

Q. What is your explanation of that fact?

A. Those extensions appear to have been typed in later, they seem to be a little bit [146] heavier.

Q. It is not an original typing?

A. No. When this was done is immaterial, because, as I say, it is merely an extension. The original copy reads, "Wrap approximately 269 6-

(Testimony of Arthur F. Snyder.)

inch joints and fittings at $2.10." That is extended, multiplying the $2.10 by 269, and I have put the amount in dollars and cents that that amounts to out here.

Q. Your carbon copy does not include the additional words, "Your offer of 30 cents per lineal foot is being taken into consideration"?

A. Yes, it does include that the offer of 30 cents per lineal foot is being taken into consideration.

Q. How do you account for the absence of extensions from here?

Mr. Harloe: What is the difference what we have on the copy? The original is in evidence. I will object to that.

A. This is my own file copy.

The Court: As I understand it, this copy is not a carbon copy of the letter?

A. No.

Mr. Harloe: That is the reason I make the objection.

A. That is a file copy I had for my own information in my own files.

The Court: If there is any question a copy can be furnished.

A. Yes, I will be glad to submit one.

Mr. Doyle: Q. Now, Mr. Snyder, the letter of August 7 that you have in your hand, the letter of August 7, the copy of letter of August 7 that you have in your hand, is that an authorization for extra work?

(Testimony of Arthur F. Snyder.)

A. Yes, it is. It says, "You are authorized to proceed with the following extra work," etc.

Q. Did you consider the work on there as extra work? A. Yes.

Q. Did it have anything to do with pit work?

A. It had to do with pit work that was extra and above that shown on the original [147] plans and specifications.

Q. Well, now, with that knowledge on August 7, 1940, that it had to do with pit work above that shown on the original plans and specifications, and the wording of the contract of May 28, 1940, did you have any conversation with Mr. Pollia about the fact that it was over and above and beyond as to what your interpretation of the contract of May 28th was?

A. We had no conversation regarding the interpretation of the original contract.

Q. At any time?

A. Not at this time, but we did after that.

Q. I mean at any time during the circumstances surrounding this letter of August 7, 1940?

A. No, there was no conversation regarding the interpretation of the contract at that time.

Q. Will you look through your file and see if you have a letter of August 23?

A. Yes, I have a letter of that date.

Q. That is Plaintiff's Exhibit No. 10. On the fourth line of the first paragraph it says, "You are authorized to proceed as instructed by us with any

(Testimony of Arthur F. Snyder.)

additional work necessary to complete the pit piping." Is that right?

A. That is right, partially, but not complete. The rest of the clause reads, "but not covered by the original plans and specifications."

Q. Did you have any conversation with Mr. Pollia on the 23rd of August about that, about the effect of the work, or its connection with the original plans and specifications?

A. I do not believe so.

Q. Have you that original specification here?

A. Either Mr. Harloe has or it has been submitted in evidence, I don't know which.

Q. Did I understand you to say that you had typed up several letters containing the language in the letter of August 7, 1940?

A. It appears that I did. This letter that is in the file is obviously not an exact copy of the carbon of letter. And I will [148] explain that by saying that perhaps I needed additional copies from what I originally made, so I typed another copy.

Q. I will refer you back to the letter of August 23 again, the last paragraph, which says, "This authorization does not supersede that covered by our letter of August 7, 1940."

A. That is right.

Q. "And the above prices on welding apply only to welds that must be made in place inside the pits." What conversation did you have with Mr. Pollia about that matter?

(Testimony of Arthur F. Snyder.)

A. Mr. Pollia previously said that he would on extra work, not covered by the plans and specifications—this extra work due to the change orders given by the Navy, he would do any necessary welding at a price of 4 cents a lineal inch, and later on some of this extra work caused by the change orders had to be done in difficult places, and Mr. Pollia said he could not do it for that price, because his cost was considerably higher, and in view of the fact we wrote this letter of August 23 and included in it the price for making these welds which had to be made in place and not at the bench.

Q. And when the welds had to be made in place, when you used the words in difficult places, you mean you knew in the pit it was hard to get at the job?

A. What I mean, Mr. Doyle, is some things could be welded together at the bench, where they could be put at the welder's disposal, and in some pits, suppose you had a piece of pipe in the ground, and you could not take out the pipe and weld the fitting into the pipe, naturally you had to excavate around the hole, the welder had to stand on his head to do the work, and it was a much more expensive job.

Q. So some of these were more difficult welds in the pit?

A. Yes; I believe there was some of these changes authorized by the [149] Navy as extra work —I can't remember exactly where they were.

(Testimony of Arthur F. Snyder.)

Q. Don't you recall, Mr. Snyder, that Mr. Pollia talked to you about that very thing, that question of the difficulty in doing the job in the pit, in response to a question by you, or an inquiry by you as to the price, and he gave you the price of doing the work inside of the pit; isn't that true?

A. No, he gave us the price for doing the work inside or outside of the pit, wherever the weld had to be made in place and not at the bench.

Q. But, Mr. Snyder, you have testified right along that the contract with Mr. Pollia covered all the work outside of the pit at all times.

A. Oh, yes, the contract covered the work outside of the pit, and in our interpretation it covered the work inside of the pit.

Q. Why did you issue work orders to Mr. Pollia to do work inside and outside of the pit when it was a more difficult job?

Mr. Harloe: He has testified he issued work orders, and why he did not I submit is immaterial.

The Court: I will permit the question.

A. I can only answer that by giving a further explanation.

Dr. Doyle: All right, let us have your explanation.

A. This extra work was caused by change orders from the Navy, and it was not all inside of the pit, some was outside the pit and some inside. I remember some in the field line clear away from any of the pits, there was a 6-inch fitting that had

(Testimony of Arthur F. Snyder.)

to be welded into the pipe line that Mr. Pollia had already installed, and that was one of the difficult jobs, where he was entitled to this price, whatever it is here, 4-inch pipe weld $1.75 per weld.

Q. That was not work that was done in the pit?

A. No, it was done outside of the pit. The principal item I am referring to, [150] that I am thinking of, as I recall, was done outside of the pit. There were also, I believe, some of these extra welds that were done inside of the pit, but I understand there were several welds that were made outside of the pit.

Q. Can you recall them now?

A. Well, I know of one specific instance.

Q. What was it?

A. Mr. Pollia laid—I am not positive whether it was a 4-inch or 6-inch pipe at the moment, but the Navy decided to install additional equipment which would require an outlet from this pipe line; the line was laid and then we had to make the change before gasoline was put in the line, because it is impossible to do welding on the line after gasoline is in it, so they gave us a change order, whereby we were to cut this line and weld into the line, and that welding was in the field delivery line.

Q. Do you know the approximate date of that occurrence?

A. Well, it was about the time of this letter, or shortly before this letter of August 23 that they requested us to do that.

(Testimony of Arthur F. Snyder.)

Q. Have you got the change order from the Navy on that?

A. I do not have my file here.

Q. Where is it?

A. I believe it is in the Los Angeles office.

Q. Isn't it true that under the specifications under which you were working on this job that the pipe fitting has to be all welded?

A. No. The gasoline pipes, in general, are welded.

Q. Is it not true that all of the gasoline pipes are welded?

A. I could not answer that without looking at the plans. You see, we do a lot of these jobs. I hesitate to answer that. At least, the great majority of it was welded. I will say that the majority of it was welded.

Q. Was not welded?

A. Was welded, that is, the gasoline pipes, [151] you understand.

Q. You said that as to the fueling pits which were shown on the plans, Flotation was working on them as a general contractor, and they were not mentioned in the contract. Did you talk about the contract with Mr. Pollia?

A. No, I did mention in the previous testimony that there were ten fueling pits that were installed under our original contract with the Navy, and there were seven additional ones that were installed under a supplemental contract with the Navy.

(Testimony of Arthur F. Snyder.)

Q. Did Mr. Pollia do any additional or subsequent installation of pits, fueling or otherwise?

A. He was given orders No. 273 and 274 to install equipment in those fueling pits.

Q. There was never any question raised by either you or Flotation, or Mr. Pollia, when he got orders 273 or 274 to do the work inside of the pit, about his doing that work in the other pits which were covered under the contract of May 28, 1940 —even at that time there was no mention of it?

Mr. Harloe: Just a minute.

Mr. Doyle: I will withdraw it.

Mr. Harloe: It is not fair to the witness——

The Court: The question is withdrawn.

Mr. Doyle: Q. Is it not true that the original contract with Mr. Pollia, as it reads in the document, not your interpreation, is, "up to the pits"?

A. The wording is, "Pollia will do the piping to the pits."

Q. Now, on the ten additional fueling pits that were installed, or subsequent to the additional order by the Navy, did Mr. Pollia get an additional work order for that work in those pits?

A. They were not additional pits, the ten were not additional pits.

Q. What were they?

A. The ten fueling pits designated on the [152] Navy plans and specifications as "F" referred to as fueling pits, were at a different location than the rest of the job, and they were not referred to in

(Testimony of Arthur F. Snyder.)

our contract with Mr. Pollia. At the time the contract was entered into with Mr. Pollia, I am quite sure that there was no intent of any of the parties that Mr. Pollia would do that work in those ten pits, and at a later date we requested an estimate from Mr. Pollia, as to how much he would charge to do this work in the ten fueling pits, or "F" pits, which led to giving him an order for doing this work.

Q. Exactly. When Mr. Pollia got the order to do the work inside of the ten fueling pits was there any conversation between you and Mr. Pollia about his doing the work on the previous bid mentioned in the letter of May 28, 1940?

A. No, not that I recall.

Q. Now, on the plans No. 1210-43-3, will you point out where the fueling pits are which you just testified to?

A. These are indicated on the Navy plans as "F", known as fueling pits. I see they call them service pits. We have been referring to them as fueling pits.

The Court: Which ones?

A. In the upper right-hand corner.

Mr. Doyle: Q. This plan of the service pit F was the type of fueling pit that was subsequently installed under an additional work order?

A. Under Order No. 273.

Q. That particular service pit appears on the plans and specifications dated November 29, 1939?

(Testimony of Arthur F. Snyder.)

A. That is right.

Q. That was long before Mr. Pollia ever got any orders to do any work? A. That is right.

Q. You stated, I am quoting you, that you were reasonably sure that Mr. Pollia installed work inside of some of the pits before the [153] Navy required any changes. A. Yes.

Q. What is there about your answer that causes you to think that you are reasonably sure that Mr. Pollia did some work inside of the pits before there was any extra work order?

Mr. Harloe: I do not understand that question, myself. Maybe the witness does.

Mr. Doyle: I withdraw that question.

Q. I understood you, and if I am in error I wish you to correct me, to testify this morning that you were reasonably sure that Mr. Pollia had done some work inside of the pits before the Navy ever issued any additional or changed plan or specification. A. That is right.

Q. Now, what is there that causes you to say that you are reasonably sure that he did some work inside of the pits before that time?

A. You mean why I am reasonably sure?

Q. Yes.

A. Well, I will have to rely on my memory largely in that case, but as soon as this contract was awarded Mr. Pollia, on May 28, 1940, he went ahead with numerous branches of the work immediately, and I distinctly recall that he was

(Testimony of Arthur F. Snyder.)

working on various phases of the work, and some of the pits were ready for him to install equipment in them, and it is my recollection that he went ahead and did all of the work wherever it was available for him to do so.

Q. Is that your answer?

A. That is my answer.

Q. Did you ever witness on the job, personally, ever see Mr. Pollia, or any of his men from the time that you just testified to, actually do any work inside of the pits?

A. I saw him do work inside of the pits, but something that happened two years ago is pretty difficult to state under oath, what he did do.

Q. What did he do?

A. I just stated he was doing all phases [154] of work, he was laying pipelines, he was doing everything that conditions would permit him to do, including pipelines inside of the pit and pipelines outside of the pits.

Q. You say he was doing all kinds of work, but you don't know exactly what he was doing. Could it not have been possible—Withdraw that question. Mr. Pollia was to put his pipes in there so that they could connect up with the special equipment, isn't that true?

A. Not entirely. You used the word "special equipment," there was standard equipment, also.

Q. Mr. Pollia was to run his pipe to the concrete wall of the pit so that the extension through

(Testimony of Arthur F. Snyder.)

the wall could be connected up to some equipment?

A. That is right.

Q. Is that right? A. That is right.

Q. Did you, personally, ever see Mr. Pollia, or any of his men, connect any of the pipe extensions through the concrete wall of the pit up to any special equipment inside of the pit?

A. Yes.

Q. What did he connect up?

A. He was connecting to plugs valves, check valves, making up the weld connections that were to enter and connect these various parts of equipment inside of the pits, and so on.

Q. This was other than extra work orders?

A. Yes.

Q. When was that?

A. That was during the period from May 28 to August 30, I can say that definitely, during that period.

Q. During that time? A. Yes.

Q. Isn't it true that during the August period that you have just testified to that the Aqua people had their men working in the pits?

A. That is correct.

Q. Did you ever see any of the Aqua people connect up their equipment with the Pollia extension into the pit?

A. No, the [155] Aqua representative assembled his equipment and installed it in the tank, that is as far as he went.

(Testimony of Arthur F. Snyder.)

Q. By the way, I note that you prepared this statement when Mr. Pollia was going to Los Angeles.

A. As I recall, I believe that is correct.

Q. And, as I understand you, when Mr. Pollia was at the Air Base at Alameda, there was still no question raised about work inside of the pit?

A. There was at the time I prepared that statement but not prior to that.

Q. Then, as I understand it, the night that you were preparing that statement, that was the occasion that Mr. Pollia went to Los Angeles, there was a question raised for the first time about work inside of the pits?

A. There was, very definitely, because we had quite an argument about it.

Q. Who raised the point? A. Mr. Pollia.

Q. Tell us the conversation that occurred.

A. I don't remember the exact conversation.

Q. Give us the substance of it.

A. The substance of it was, Mr. Pollia stated that he was going to get paid for all of the work inside of the pit, and I said I didn't know whether he was going to get paid for it, or not, that would depend on the people in our office at Los Angeles. He said, "Well, I am going to get paid for it, and I want a list of it signed by yourself and I am going to take it down there and going to get paid." I know the outcome of the conversation was that I agreed to draw up a document of all the work done,

(Testimony of Arthur F. Snyder.)

regardless of whether it was covered by this contract or whether it was not, or whether he was to get paid for it, or not; we took an inventory of all the work that he had done on the work to be done—I believe there was work not completed at that time; we made up this inventory, and [156] I gave it to Mr. Pollia to take down to Los Angeles with him, and let him settle it with our office down there.

Q. Who is the first one who raised the question about paying for the work inside of the pits?

A. Mr. Pollia, I believe.

Q. Was that the first mention made of it, Mr. Snyder?

A. The first mention I recall, Mr. Doyle.

Q. Isn't it true that in so far as any question about work inside of the pits is concerned, the first time it came up was that night?

A. No, the first time it came up was a few days, a day or two prior to that, when Mr. Kalte was in the office, and Mr. Pollia brought in the bill for all of the work he had done inside of the pit.

Q. Then you testify the first time it came up was the night before—— A. A day or two.

Q. In a discussion between Mr. Kalte and Mr. Pollia and yourself, is that right?

A. I believe Mr. Ceriat was there, too.

Q. Were you in the office when this question first arose, or did you happen to come in during the course of the discussion?

A. No, I was in the office, as I recall.

(Testimony of Arthur F. Snyder.)

Q. And Mr. Pollia came in with this statement?

A. Yes.

Q. With the statement of the work outside and inside of the pits? A. That is right.

Q. Who took the issue they would not pay it, you, or Mr. Kalte?

A. There was no issue taken. The question was raised why he billed us for that, whereupon the contract was brought out and the wording of the contract stated that Mr. Pollia would do the work to the pit, and there was not very much more said at that time.

Q. That is the fact, is it not, you produced a copy of the contract from the Flotation Systems, and the contract was read, to [157] do the work up to the pit, and that ended the argument?

A. No, it did not end the argument.

Q. What happened?

A. To be specific, Mr. Kalte had to get an airplane back to Los Angeles, and I do not recall exactly what was said, but the thing was dropped right there, and Mr. Kalte went back to Los Angeles to think it over, and I took him to the plane. That is about all.

Q. That did not end the argument, because the argument is still going on, but what I meant to put to you was, when Mr. Kalte and/or yourself reread the contract of May 28th and came down to the language "to the pit," there was nothing more said about the matter at that time?

(Testimony of Arthur F. Snyder.)

A. Mr. Kalte said, "Well, I will take this down to Los Angeles and discuss it with the other members of the organization," or words to some such effect.

Q. Then, pursuant to Mr. Kalte's instructions to you, you prepared this inventory or this statement?

A. I do not believe Mr. Kalte instructed me to issue this inventory. I did it under pressure of Mr. Pollia's demand.

Q. As a result of some discussion you prepared some kind of a statement, did you?

A. Yes, at the request of Mr. Pollia I prepared it.

Q. And that statement included all the work that he had done inside and outside of the pit?

A. All the work that he had done, and all the work he had not done, I put down on the sheet.

Q. Have you got that statement?

A. I do not believe I have it.

Q. Is that in Los Angeles, also?

A. I don't know. We tried to locate that particular inventory, I would not call it a statement, I refer to it as an inventory of the work on the job. I do not seem to have a copy of it.

Q. Isn't this true, that it was an inventory—withdraw that. [158] Isn't it true that Mr. Pollia wanted some money on account? A. Yes.

Q. Isn't it true the question was as to how much money he should receive on account?

A. Yes.

(Testimony of Arthur F. Snyder.)

Q. And in order to determine if there was money due him, at all, in order for your Los Angeles office to make any payment, whatsoever, they would have to have some account or statement to show them what they were doing?

A. That is right.

Q. And the inventory that you prepared was only an inventory of all the work—by that I mean inside and outside of the pits? A. Yes.

Q. That Mr. Pollia had done or completed up to the night that you drew the inventory—I am not interested in all the other work, because we are not involved with that.

A. That is correct, with this exception, that I think that there were a few connections, some of the work that had not yet been done, and to give the complete basis for our Los Angeles office to act upon in accordance with their best judgment, we also listed the work that had not yet been done but would have to be done for completion of the job.

Q. In other words, you claimed that there was some work showing on the inventory that Mr. Pollia was to do? A. Yes.

Q. And Mr. Pollia, at that time and place, mentioned that the extra work was not under the original contract?

A. Yes, he mentioned at that time that portion was extra.

Q. Mr. Pollia was going to Los Angeles to get

(Testimony of Arthur F. Snyder.)

money due him based upon your inventory from the beginning of the work up to the night he left?

Mr. Harloe: I object to that as asked and answered.

The Court: I think the objection to the repetition is good. [159]

Mr. Doyle: Q. Isn't it a fact, Mr. Snyder, that Mr. Pollia was insisting upon your drawing an inventory so that he could take it to your Los Angeles office, so that they could make a payment to him from the inventory that you prepared?

Mr. Harloe: That was not the testimony, and I object to it again.

The Court: You can ask him if that is not the fact.

Mr. Harloe: May I have that question read?

(Question read by the reporter.)

A. That is correct.

Mr. Doyle: Q. You were not at the Los Angeles conference the following morning, or at any time thereafter? A. No.

Q. Referring to the testimony that you gave this morning about the bill of particulars, "Welding joints, $195.90," and which you have no record of in the record that you have prepared, did you see Mr. Pollia do any welding of any of the joints involved therein? A. Which item is that?

Q. Item No. 3.

A. I saw him weld the joints in the pipeline. He had to weld the pipes together to install the pipeline.

(Testimony of Arthur F. Snyder.)

Q. I understood you, in reply to Mr. Harloe this morning, to deny the item No. 3, of $195.90.

A. That is right. We had no knowledge of what that item constitutes, because in the original contract it states that Mr. Pollia will lay the pipeline and install the gasoline pipes; he would have to weld them together to install it, and the contract specifically states including welding, and for what reason he has charged us Item 3, we do not know.

Q. Then you do not deny that he might have done this work and you not have seen it?

A. Yes, I deny it, because I know all of the work that was done, and I know it was all necessary to [160] the installation of the pipeline.

Q. Mr. Snyder, if you will, we will go back to your letter of August 23, 1940. Have you got it?

A. Yes.

Q. You have some figures there on pipe welding.

A. That is right.

Q. Is it your contention that the pipe welds mentioned in the letter of August 23, 1940 were not the pipe welds specified in the bill of particulars?

A. That is right. The pipe welds authorized in our letter of August 23, 1940 were pipe welds and extra work caused by the change orders from the Navy.

Q. How do you know, then, that these extra welds caused by the change of the work order from the Navy was not this very work that Mr. Pollia is charging you for now?

(Testimony of Arthur F. Snyder.)

A. Because all the items are accounted for in certain items that he shows.

Q. Where?

A. Well, let us go through the list, here. This requires me to refer back to see what each of these items refers to. Here is one of them, Work Order 1215, to Mr. Pollia, it says, "Cut off turn and re-weld 6-inch flange on B tanks at $4.50 each, $9." That is Order No. 1215.

Q. What is the date of that order, if you have it there?

A. My copy does not have the date on it. I don't know whether it is on the original, or not, that is Order 1215, and there is an item for $242, and one of these welds is included in that item, or several of the welds, I should say.

Q. Well, now, I beg your pardon, have you finished?

A. I think if you will give me a little time, here —the majority of them Mr. Pollia has under the last item on page 1 of the bill of particulars, letter dated August 23, 1940. You will recall my testimony this morning that I took the amount of $4903.20 and I said there were certain items authorized for which Mr. Pollia was entitled to payment, and I enumerated those [161] items in my testimony this morning.

Q. Have you finished? A. Yes.

Q. Now, on work Order 1215 that you have referred to, it was some work on cast iron pipes——

(Testimony of Arthur F. Snyder.)

Mr. Harloe: Show him the order.

A. I have it here, that is Order 1215, it calls for the installation of 54 feet of 8-inch water main removed by us and replacing the same water line, and cut off turn and reweld 6-inch flange on two tanks at $4.50 each weld.

Mr. Doyle: Q. Now, in the letter of August 23, which was dated prior to Order No. 1215, have you got that? A. Yes.

Q. The letter of August 23 was for welding also.

A. That is right. Order No. 1215 was a specific order to do certain specified work.

Q. What about the letter of August 23?

A. August 23 was a letter authorizing Mr. Pollia to do the work not covered by the original plans and specifications, the extra work in all of the pits.

Q. Wasn't Order 1215 an extra work order, also?

A. That is right, but you might say in this particular case it is a duplication, it is an item that came up later that did not come to our attention at the time we wrote the first order, and it is merely an order for him to do particular items.

Q. Then, do I understand you to testify that notwithstanding the letter of August 23, in which you requested certain welding to be done, that you issued a written order on the same item on August 29?

A. No. I would classify the letter of August 23

(Testimony of Arthur F. Snyder.)

as a blanket order for all extra work not covered by the original plans and specifications, at designated unit prices. The three-item order No. 1215 is, you might term it, a duplication [162] of that order, inasmuch as the three items call for extra work. That is all it amounts to, a duplication.

Q. All right. In order to avoid a misunderstanding, you used the words, you might interpret the letter of August 23 now as a blanket order. Do you recall that?

A. That is what I said, it is a blanket order to do all the work. I did not break up all the work not included in the original plans and specifications in regard to working out unit prices.

Q. If you gave Mr. Pollia a blanket order on August 23 to do all the extra welding, as you testified to, what was the occasion of your issuing another order on August 29 for welding, also?

A. To be specific, there was no occasion for it, it was unnecessary.

Q. That is the reason, you say, as to the charge of $195.90, you don't know anything about that?

A. No, that has nothing to do with it. There is no connection with it.

Q. Do you know how much Mr. Pollia paid for the civil engineer, which is $25 in the bill of particulars?

A. I don't know how much. All I know is, at the time I asked him he said the time came to $4 and something, whatever it was, which I gave in my testimony.

(Testimony of Arthur F. Snyder.)

Q. $4.35? A. Yes.

Q. Notwithstanding the fact that you asked Mr. Pollia how much Flotation owed Mr. Pollia for the use of that civil engineer, you don't know how much Mr. Pollia paid the civil engineer for his work?

A. Naturally not, that is not my business, what he paid.

Q. You do not mean to say that the bill that Mr. Pollia charges as $25 was $4.35?

A. Yes.

Q. If you don't know how much he paid the civil engineer, how [163] could you say he paid only $4.35?

Mr. Harloe: I object to that as argumentative.

Mr. Doyle: I will withdraw the question. Just one more matter and I will finish with this witness.

Q. You say that there was an item of $2300 where the tile drain work was omitted.

A. That is right.

Q. Why was the tile drain work omitted?

A. The original plans and specifications were for an 8-inch tile drain line, and the Navy engineers calculated and found out that an 8-inch line was inadequate, whereupon they requested us to install a 12-inch drain line, and our original contract with Mr. Pollia was he was to install an 8-inch drain line, and when this change came up we decided not to have him install it, and, therefore, a deduction of $2300 from the contract price was in order, because Mr. Pollia did not install any

(Testimony of Arthur F. Snyder.)

drain line at all. The wording of the original contract with Mr. Pollia specified that if the drain line should be omitted that amount should be deducted.

Q. The Government substituted the 12-inch tile drain for an 8-inch tile drain?

A. They definitely required a 12-inch drain line, which was installed by another contractor.

Q. About when was it the Navy required a 12-inch drain line?

A. Even at the time we entered into the contract with Mr. Pollia, they were discussing, the Navy engineers were discussing this, and they felt at the time, they were not positive, they had not decided at that time that the 8-inch line would be inadequate, and it was for that reason, I believe, that when Mr. Ceriat and Mr. Pollia wrote up that contract they put in that provision in the contract, if they Navy did decide not to put in the 8-inch line a deduction of $2300 would be made from the amount of the [164] contract.

Q. Will you point that out in the contract, if you please? I am referring to Plaintiff's Exhibit 2, May 28, 1940. The fourth paragraph mentions a 12-inch drain pipe.

A. I see that I am in error about that. I do have a paper in my file signed by Mr. Pollia which is a subsequent part of that contract, as to omitting the tile drain. Can I show you this, Mr. Doyle? It is not an original, I believe you have the original.

(Testimony of Arthur F. Snyder.)

Mr. Harloe: Is there any question that that was omitted, Mr. Doyle?

Mr. Doyle: There is no question about its being omitted, I am merely attacking the recollection of this witness, his credibility about a lot of matters.

A. I was in error there. I thought it was in the original contract; it was not. This is a supplemental agreement.

Q. This is the document that you are talking about?

A. That is the document I am talking about. I was in error in stating it was incorporated in the original contract.

Q. Do you know whether or not any information had ever been communicated to Mr. Pollia with reference to the fact that the Government ever wanted or ever contemplated anything other than the 12-inch drain?

A. No. The original specifications called for an 8-inch drain, at the time the contract was drawn up between Flotation Systems and Mr. Pollia, and——

Q. (Interrupting) You say Mr. Pollia——

The Court: Let him finish.

A. The 8-inch line was on the specifications, and Mr. Follia agreed to install this work as per plans and specifications, so I see no reason why the 8-inch line was not originally contemplated. [165]

Mr. Doyle: Q. Would you say, then, that Mr. Pollia, in his contract of May 28, 1940, apparently figured on a 12-inch drain line?

(Testimony of Arthur F. Snyder.)

Mr. Harloe: That is calling for somebody else's state of mind.

Mr. Doyle: I will reframe the question.

Q. In view of your last answer, then, was there ever any occasion about Mr. Pollia figuring on a 12-inch instead of an 8-inch drain line, as shown in the contract?

A. We are getting back to the time question again, and it makes it hard to remember. I will say it is possible that Mr. Pollia was advised that it would be a 12-inch line, and at the time that the contract was entered into it is possible that he might have figured on installing a 12-inch line on May 28th instead of an 8-inch line. However, the line was not installed by Mr. Pollia, and he signed an agreement whereby he agreed that the Flotation Systems could deduct $2300 if he did not install it.

The Court: We will take our recess of ten minutes at this time.

(After recess:)

Mr. Doyle: Q. Mr. Snyder, the letter of August 23, 1940, which is Plaintiff's Exhibit 10, covers some joints and some welds, and contains, among other language, the following: "You are authorized to proceed as instructed by us with any additional work necessary to complete the pit piping, but not covered by the original plans and specifications."

A. That is right.

Q. Is that correct?

A. That is correct.

(Testimony of Arthur F. Snyder.)

Q. You state the work and the price?

A. Yes.

Q. "This authorization does not supersede that covered by our [166] letter of August 7, 1940, and the above prices on welding apply only to welds that must be made in place, inside the pits."

A. That is right.

Q. Now, in this letter of August 23 you refer to the contract of May 28, 1940. A. Yes.

Q. And in the original contract of May 28, 1940, Item 2 is, "Complete installation of all gasoline pipeline as covered by plans accompanying specifications 9505, including necessary excavation, backfill, replacement of red rock surfacing, repairs to any existing roads, welding, and testing all joints and all connections to pit boxes." A. Yes.

Q. Then you specify pits A, B, C-2, D and E.

A. That is right.

Q. The letter has a list of the tanks corresponding to the Navy plans?

A. Each pit has a number in them.

Q. In A-1, B-1, C-2, D-8, and E-16.

A. Yes.

Q. Now, have you the original letter that was given you by Mr. Pollia on the night of August 29, that was the night that you prepared this inventory that he was to go to Los Angeles.

A. That is in evidence, Mr. Doyle.

Mr. Doyle: The original of August 29?

Mr. Harloe: Yes.

(Testimony of Arthur F. Snyder.)

Mr. Doyle: Q. What were the circumstances under which Mr. Pollia brought this letter of August 29 to you, which is Plaintiff's Exhibit 11?

A. That was the statement referred to in my testimony when Mr. Kalte and I were in the office, and that was the first information we had that we were understood to pay for all the work in the pits.

Q. That was less payment No. 1?

A. Yes.

Q. And less payment No. 2 of $4737.49?

A. Yes.

Q. That was the letter you could not find yesterday and you [167] found in your file this morning? A. Yes.

Q. Then you have this extra work order $208, and the item $165, and $1760, corresponding to the bill of particulars which was submitted to you, which you subsequently examined?

A. I believe that is correct.

Q. You will observe in the letter Mr. Pollia gave you of August 29, 1940, that he stated complete work in pits A, B, C, D, and E?

A. That is correct.

Q. And item 2 of the contract says, "up to the pits."

The Court: That is in evidence.

Mr. Doyle: That is true.

A. Would you read that part?

Mr. Harloe: The contract says up to the pits.

Mr. Doyle: Q. In other words, Mr. Snyder,

(Testimony of Arthur F. Snyder.)

Plaintiff's Exhibit 7, the letter of August 29, 1940, covers the pits by letter and number, as in the contract to the pits by letter and number in the original contract of May 28, 1940?

A. The items in the letter of August 29 refer to the same pits that are referred to in the contract of May 28, if that is what you mean.

Q. And show extra charges for that work upon Mr. Pollia's statement?

The Court: Don't the letters speak for themselves?

Mr. Doyle: Yes. Thank you very much. That is all. No further questions.

Redirect Examination

Mr. Harloe: Q. Mr. Doyle has examined you at great length with reference to work orders 273 and 274, as to what they applied to. A. Yes.

Q. Work Orders 273 and 274 applied to Pit F, as designated on the plans and specifications, did it?

A. Yes. [168]

Q. And pit F was never at any time mentioned in the contract with Mr. Pollia?

A. Pit F was not mentioned.

Q. So, therefore, any work that might have been done by Mr. Pollia under any order was work that was never contemplated in the contract, whether it was in or out of the pit?

A. That is right.

Q. It was all extra work? A. Yes.

Q. In answer to a question this morning by me

(Testimony of Arthur F. Snyder.)

as to A. R. Reid & Company, Mr. Snyder, I want to call your attention to this, A. R. Reid & Company wrapped certain pipe and joints on this job for Mr. Pollia? A. Yes.

Q. Did A. R. Reid & Company furnish the material, also, for the wrapping of this pipe on the 120 feet of pipe you spoke of?

A. I am quite sure they did.

Q. The amount of A. R. Reid & Company's bill, as set forth in the Answer, was the sum of $487.52?

A. Yes.

Q. You caused that amount to be paid to A. R. Reid? A. That is right.

Q. You also caused the amount of $44.15 to be paid to the Western Crane Company?

A. I do not believe that bill was ever settled, Mr. Harloe, that particular one of $44.15. I am not sure about that. I think that amount is still in default to the Western Crane Company.

Q. You think that is still in default to the Western Crane Company? A. Yes.

Q. The Thomas Welding Company, $182.50.

A. Yes, we paid that.

Q. The E. K. Wood Lumber Company, $4.82.

A. I believe the $4.82 is in default.

Q. The $4.82 is still due? A. Yes.

Q. J. Catucci, $722.21.

A. $746.59 is what we actually paid.

Q. There was a change in this bill, and it figured up to that [169] amount. Those amounts were paid by you? A. Paid by Flotation Systems.

(Testimony of Arthur F. Snyder.)

Q. And an assignment taken to the Flotation Systems? A. That is correct.

Q. Now, Mr. Snyder, with reference to the Shanmac Company, did you ever have any conversation with Mr. Shannon or Mr. Mackie, who constituted this Shanmac Company, with reference to work on the Flotation Systems job? A. Yes.

Q. And when did that occur?

Mr. Doyle: Mr. Harloe, I presume in the interest of time you are directing this examination relative to the complaint in intervention, and I think Mr. Stark ought to be here when that is done. In so far as we are concerned, we object to it.

The Court: I do not understand.

Mr. Harloe: Mr. Doyle calls my attention to the fact that I am addressing this line of questions to Mr. Snyder relative to the complaint in intervention by Mr. Stark for Shanmac Company, and I believe, properly speaking, that Mr. Stark should be here when that testimony is introduced.

Q. Mr. Snyder, attached to the item are certain items, as follows, which were paid by Flotation Systems: The first item there is, "20 hose reels, cost of installation $150." Are those hose reels as set forth in the Answer as a set-off the same hose reels that you spoke about that were not installed by Mr. Pollia by reason of the fact that the equipment was not available out there, and they were subsequently installed by the Flotation Systems?

A. Yes.

(Testimony of Arthur F. Snyder.)

Q. Now, the charge in the bill of particulars on that account is for the actual installing of those, and it gives no credit for not installing them, is that so? A. That is correct. [170]

Q. The next item is "50 pounds of lead purchased June 29, 1940 at 4 cents a pound, $2. Moving rock at boathouse with Bigge crane July 10, crane 2 hours at $6, $12, crane operator 2 hours at $1.67, $3.33, crane oiler 2 hours at $1.17, $2.33," making a total of $17.66. Was that paid by Flotation Systems? A. Yes.

Q. Now, was that part of the work that should have been done by Mr. Pollia?

A. The crane work, Mr. Harloe, you are referring to?

Q. Yes.

A. This crane work was done by equipment we were renting for work on another job that Mr. Pollia was doing.

Q. Then the next item, "Moving rock at boathouse with Western crane, August 19"——

Mr. Doyle: If your Honor please, in view of the last answer of the witness, the plaintiff at this time will move to strike the item contained in the Answer and the testimony of the witness for the purpose of showing a charge here by the defendant against Mr. Pollia for other work that he was doing. This may be a set-off on another cause of action that the Flotation may have against Mr. Pollia, but there is no such thing as a set-off for

(Testimony of Arthur F. Snyder.)

any work that the corporation does for Mr. Pollia that is not in the contract before the Court.

Mr. Harloe: The witness has answered that this was work contemplated by the contract.

The Court: I did not understand that this work did not apply to the contract.

Mr. Harloe: I will withdraw my last question and go back to that. The first question is moving rock at boathouse with Bigge crane, on July 10.

A. Yes.

Q. What does that refer to?

A. That refers to a job that Mr. [171] Pollia used the crane on, on which we paid the rental, and I do believe he used it another job not on the contract.

Q. In other words, that refers to payments that the Flotation Systems made for the rental of a crane which was used by Mr. Pollia some place else? A. That is correct.

Q. So that, as I understand it, there were two jobs going on at the same time, that is, the job you call the boathouse job, and Mr. Pollia was doing some work for the company that were doing that work?

A. That is right. Mr. Pollia was working on both jobs.

Q. What company was doing that?

A. The California Construction Company.

Q. In the doing of Mr. Pollia's work for the Flotation Systems, they were paying rental for the

(Testimony of Arthur F. Snyder.)

Bigge crane for doing work on their own job, were they?

A. I do not understand that question.

Q. What was the Bigge crane?

A. Well, we did considerable excavation work on the job, and for this excavation we hired Bigge's crane, and we paid rental on it at all times.

Q. You paid rental at all times? A. Yes.

Q. Then the Bigge crane that you were paying rental on was used by Mr. Pollia on this other job?

A. That is right.

Q. And you charged that against him?

A. We did, yes.

Mr. Doyle: To which we renew the motion, that the matter contained in the answer be stricken and the evidence be stricken, upon the ground that if there was a cross-complaint in this matter on behalf of the defendant against Mr. Pollia, the cross-complaint would rise out of the subject-matter of this particular matter, and not some other job.

The Court: We will take up that matter later in the argument. [172]

Mr. Harloe: Q. The same applies to the next item of $17.66? The same applies.

Q. Then we have lumber purchased July 11th from E. K. Wood Lumber Company and charged to Flotation Systems, $4.26. What was that?

A. Mr. Pollia purchased some lumber that he used in conjunction with the execution of this contract for us, and he didn't pay it; in fact, he

(Testimony of Arthur F. Snyder.)

had the bill charged to us directly—the E. K. Wood Lumber charged us directly for the lumber that our subcontractor used, and we paid the bill.

The Court: Didn't you go over all of these matters with this witness when he first took the stand?

Mr. Harloe: No, I did not, your Honor.

The Court: I thought you did.

Mr. Harloe: I did not go over this matter, I overlooked it.

Q. All of these items shown on Exhibit B to the answer, of which you have a list there, all were charged against Mr. Pollia on the Flotation job, except for the bill for the rent of the Bigge crane on the boathouse job that Mr. Pollia did?

A. Yes, all of those except the two items were for material or services or labor pertaining to the job in question.

Q. Now, coming, Mr. Snyder, to the letter of August 29, and the last five items there above the payroll, which reads, "Complete work in pits," and that sets forth the specific amount for each pit, have you added up the total of that amount?

A. I did at one time. I do not have that figure before me, here.

Q. It is a matter of addition. Those add up to $2693.65. Is that right? A. That is right.

Q. That letter of August 29 was a letter submitted by Mr. Pollia, whereby he claimed payment for all work done in the pits?

A. That is correct. [173]

(Testimony of Arthur F. Snyder.)

Q. Now, the bill of particulars which is in evidence, have you a copy of it there?

A. I have it, yes.

Q. The bill of particulars sets forth for that same work how much?

A. $4903.20, assuming that Mr. Pollia claims that he did all the work inside of the pits under our letter dated August 23, which has been discussed, which he contends is his authorization to do that work.

Mr. Harloe: I think that is all.

The Court: Any other questions?

Mr. Doyle: Yes. With the permission of the Court I would like to ask a question or two on cross examination.

Recross Examination

Mr. Doyle: Q. Mr. Snyder, you testified this morning about there being some trouble or some conference involving Mr. Pollia with Commander Siebert at the office about the delay in finishing the job, and the penalty.

A. There was a conference. We consumed a lot of time on that.

Q. As a matter of fact, there was never any penalty imposed upon anybody at any time, was there?

A. No, there was not, as a result of an occurrence that happened sometime after Mr. Pollia left the job. There was a large extension of the job by the Navy whereby we installed the entire

(Testimony of Arthur F. Snyder.)

additional system, and under the terms of the Naval contract the large extension of work abolished the penalty that we were subject to.

Q. Pursuing that question, in so far as the possibility of any penalty is concerned, there actually was none suffered by you?

A. As a result of actual circumstances, no, but at the time of this conference with Mr. Siebert we were subject to payment of penalty.

Q. Irrespective of being subject to a penalty, none was ever [174] levied or suffered?

A. Through circumstances occurring it made it unnecessary for us to pay the penalty.

Q. Now, so far as the bill of particulars is concerned, with respect to the hose reels to be installed inside of the pits, you testified this morning that there were 10, of the value of $20 each, that would be $200.

A. There were 20 hose reels at $10.

Q. That would be $200? A. Yes.

Q. The document that you were examined on by Mr. Harloe has $150, which is correct?

A. I noticed that. As I remember subsequent estimates, we revised that; I will say in all fairness that $150 is correct.

Q. In the bill of particulars this morning you questioned an item of a rental of cranes as being at $8 an hour instead of $7. Do you recall that?

A. Yes, if you will look at this bill that Mr. Pollia presented us on August 7, this same item

(Testimony of Arthur F. Snyder.)

appears on this bill at $7 an hour. I have it right here.

Q. You have got a bill there on his stationery of August 1, 1940?

A. I am referring to the bill of August 29, 1940.

Q. That was the document that you based your inventory upon, or referred to in making up the inventory?

A. That is the document I referred to.

Q. That shows $7 an hour? A. It does.

Q. This morning you testified that on the bill of particulars, instead of it being $164, it should be $142.50? A. I believe that is correct.

Q. The same type of equipment upon the bill of particulars, is that the same type of equipment that you were billing to Mr. Pollia in Exhibit B of the Answer? A. No.

Q. Similar equipment?

A. Similar equipment, but not the same. [175]

Q. Is there any difference in the rate per hour charged?

A. No. The machine that we allowed Mr. Pollia to use I believe was a larger machine than the one he rented to us.

Q. Is it comparable in price? A. Yes.

Q. The machine that Mr. Pollia was using and the machine that you rented to him, was that the machine and operator? A. Yes.

Q. And yet on your Exhibit B to your answer —we are charging $7 in the bill of particulars and

(Testimony of Arthur F. Snyder.)

yet in your exhibit you have the rental of the crane, operator and oiler in the amount of $8.84 an hour, for the same type of equipment.

A. You are adding time for the oiler?

Q. Yes.

A. This crane that we rented Mr. Pollia was a large derrick crane; the equipment was similar in purpose, but there was considerable variation in the rental paid. This is the bill for the operator's time, and the oiler's time, exactly what we paid for it. Mr. Pollia's charge against us for the use of his crane is based upon what he told me, which is substantiated by this bill which he presented us on August 29.

Q. What about the other item of $404 for the equipment, in Mr. Pollia's bill of particulars? In other words, you testified that $404 should be at the rate of $7, multiplied by the number of hours, which would bring it to $353.50.

A. That is right.

Q. Did Mr. Pollia give you the number of hours that he used that equipment?

A. I don't know whether he gave it to me or whether I calculated it from this bill of particulars. I believe I had a record of it. I would have to go through my file, here, to some extent, to verify that, but I have no recollection of any discrepancy in the number of hours.

Q. Now, you have the last item mentioned here, "Estimated cost of replacing and repairing tools

(Testimony of Arthur F. Snyder.)

and equipment borrowed and [176] lost or damaged by employees of Pollia, $100." A. Yes.

Q. What equipment was borrowed, damaged or lost? A. A great many tools.

Q. Name a few of them.

A. I will name a section of hose, which was worth $50, that Mr. Pollia, through carelessness, ruined for us, made it of no value.

Q. In what respect?

A. That hose was a rigid hose, and he allowed one of his trucks to be run over it by careless employees, which made the hose useless.

Q. Did you see that act of carelessness or negligence? A. No.

Q. Who told you that?

A. Well, Mr. Ceriat.

Q. Was Mr. Pollia there when that statement was made?

A. Yes, they had quite an argument about it.

Q. Now, as a matter of fact, you were to deliver all the material on that job?

A. The material, but not tools.

Q. As a matter of fact, there was considerable delay in the forwarding of some of the material to the job, was there not?

A. Not a great deal. We expended every effort to get the material to Mr. Pollia as he needed it. As I said before, on the stand, we made several trips to town when he said he was short something.

Q. Isn't it true, Mr. Snyder, that Mr. Ceriat

(Testimony of Arthur F. Snyder.)

made two trips to Los Angeles in order to arrange for the delivery of material?

A. He made two trips to Los Angeles, as I recall, but I don't recall the particular purpose of his trips.

Q. You were in court yesterday and heard Mr. Ceriat testify he made two trips to Los Angeles to get material to come up here?

A. I heard him say that, but I don't know that is what he went to Los Angeles for.

Mr. Doyle: No further questions. [177]

The Court: Do you want to call any other witnesses?

Mr. Harloe: In so far as the defendant is concerned, that is its case, save and except as to the claim of the intervenor, the Shanmac Company, in the sum of $1048, and I believe, in all fairness to Mr. Stark, who represents them—I want to put on a little testimony, but I think in all fairness to Mr. Stark he should be present, and I would respectfully request your Honor, that we take it up at your Honor's convenience, it will merely take about ten minutes, and I will notify Mr. Stark to be here for that purpose.

The Court: Will you have any other witnesses?

Mr. Doyle: Yes, your Honor. I might make this statement: When I originally discussed this matter with Mr. Harloe, I understood that the defendant would put on Mr. Kalte and Mr. Snyder. I therefore, on behalf of the plaintiff, move that

plaintiff be permitted to reopen his case to call Mr. Kalte as an adverse witness.

Mr. Harloe: There is no objection to that, unless you want me to call him. So that the record will be straight I will call Mr. Kalte.

FRED E. KALTE,

Called for the Defendants; Sworn.

Mr. Harloe: So far as the Flotation Systems is concerned, I have no purpose in calling him, but in the interest of time you may cross examine him as an adverse witness.

Cross Examination

Mr. Doyle: Q. What is your official capacity with the Flotation Systems, Inc., Mr. Kalte?

A. Vice-President.

Q. How long have you been so employed?

A. Ever since the [178] inception of the company; that was in August, 1939.

Q. In order to shorten this up, I understand that you originally came in contact with Mr. Pollia with reference to this job, with Mr. Ceriat, at the Navy Base at Alameda, around May 28, 1940?

A. Approximately that time, yes.

Q. Do you know, of your own knowledge, that he actually commenced that work before his contract of May 28, 1940 was signed?

A. None other than I received reports in the office.

(Testimony of Fred E. Kalte.)

Q. Did you see this contract dated May 28, 1940 when it was forwarded to your office by Mr. Ceriat?

A. I believe I did glance at it, I don't remember going over it very thoroughly. I turned it over to Mr. Henry.

Q. Did you, or anybody, make any suggestion about changes, or any of the contents in the letter?

A. No, not at that time, I never made any comment.

Q. Did you make or suggest any changes in the letter of May 27, 1940, at any time? A. Yes.

Q. Is it true that you made a suggestion about a revision to provide for the work inside of the pits?

A. I am sorry, I misunderstood your previous question.

Q. My question was directed to the point of suggested changes.

A. What date?

Q. I don't know, that is what I am trying to find out. When was the first time, if you recall, that you saw the letter of May 28, 1940?

A. You mean the letter that Mr. Ceriat wrote down to our office as to what Mr. Pollia would do?

Q. That is the letter I am talking about.

The Court: What is the number?

Mr. Doyle: Plaintiff's Exhibit 2.

A. It is funny, but I do not remember ever seeing that letter. [179]

(Testimony of Fred E. Kalte.)

Q. Did you ever write to Mr. Ceriat or anyone about any provisions to be put in any contract to be drawn? A. Yes, I did.

Q. Where is that letter?

A. That is the letter, the answer I wrote in answer to Mr. Ceriat's letter to our Mr. Henry.

Q. Then you had some idea about the negotiations with respect to a contract? A. Oh, yes.

Q. And as a result of that knowledge of the execution of a contract, you issued certain instructions to Mr. Ceriat? A. Yes.

Q. You were interested in it to be sure that the contract provided for the work inside of the pit?

A. Yes, in addition to all of the rest that was stated in the letter.

Q. You left it up to Mr. Ceriat to see that the work was done? A. Yes.

Q. Mr. Ceriat sent the letter of May 28, you took it and filed it?

A. I turned it over to Mr. Henry and it was filed.

Q. Who was Mr. Henry?

A. President of the Flotation Systems.

Q. As a matter of fact, you did read the contract, but did not review it very carefully?

A. That is right.

Q. And after you read it or glanced at it, you merely turned it over to Mr. Henry, and ultimately it went into the file in the ordinary course of business? A. That is right.

(Testimony of Fred E. Kalte.)

Q. Who was the first person to call your attention to the fact that there was some question about whether it was up to the pits or in the pits?

A. I believe it was Mr. Snyder.

Q. About when was that, with respect to the date of the execution on May 28, 1940?

A. I stayed over on business at the job, and Mr. Snyder told me, just exactly what date I can't remember, but it was shortly before Mr. Pollia came down with a bill.

Q. Shortly before Pollia came down with the bill? A. Yes.

Q. As a matter of fact, Mr. Kalte, this is the situation: that [180] you were up here on some business, you were over to the job in Alameda?

A. Yes.

Q. And that was the first time that Mr. Snyder intimated or stated to you that there was some question about whether the work was up to the pits or inside of the pits? A. That is right.

Q. That is right? A. That is right.

Q. That was about the time that Mr. Pollia was going to ask for a payment on this job?

A. A little before.

Q. And you went back to Los Angeles?

A. That is right.

Q. And you instructed Mr. Snyder to prepare some kind of inventory or statement, so that you would know what could be done? A. No.

Q. What happened?

(Testimony of Fred E. Kalte.)

A. When I found out that Mr. Pollia was trying to collect for all of the extra work in the pits, I just told Mr. Snyder I would have to talk it over, and I had to go down to Los Angeles to talk it over with Mr. Henry, and he pointed to the word "to".

Q. Who is "he"? A. Mr. Snyder.

Q. When you saw that word "to" you indicated you would have to go down and talk to Mr. Henry?

A. Yes.

Q. Nothing else happened?

A. At that time, no.

Q. You made some observation you would go down South and see if the original contract in that office was the same as the work contract in that office?

A. I wanted to talk with Mr. Henry.

Q. You went down to Los Angeles?

A. Yes.

Q. And Mr. Pollia finally appeared down there with this inventory and statement of August 29, 1940, or about that date?

A. All I saw was that he had a statement.

Q. Who?

A. Mr. Pollia presented me with a statement.

Q. Do you know what statement that is?

A. For all the charges [181] up to date.

Q. Do you know where that statement is?

A. I believe it is a matter of record.

Q. You mean the August 29th statement—you are referring, I take it, to Plaintiff's Exhibit 11?

A. Yes, I believe that is the one.

(Testimony of Fred E. Kalte.)

Q. Do you recall Mr. Pollia coming down to your office at Los Angeles with any document that was prepared by Mr. Snyder? A. Only this.

Q. That is all you recall?

A. That is all I recall.

Q. I will show you Plaintiff's Exhibit 11, the first item of which is, "Less Payment No. 1, $7600," and "Less Payment No. 2, $4737.49," and then the items in the third set of figures in the sum of $7493.14. Is that correct?

Q. When Mr. Pollia came in that morning to your office in Los Angeles, tell us what transpired.

A. To the best of my knowledge, we went into Mr. Henry's office, Mr. Pollia and myself, and we talked with Mr. Pollia for a moment, and then we called in Mr. Ceriat, and we had a conversation.

Q. At the conversation would you please relate exactly, word for word, or the substance of what each party said?

A. This is just from memory.

Q. Your best recollection.

A. In the first place, I did not feel the job was completed, and Pollia was asking for more work than had actually been completed, and I did not feel that extra for the work for the fueling pits was due him. Mr. Henry made the remark that—I don't remember the exact words he used.

Q. That is all right, give us the substance.

A. The substance of it was that Mr. Pollia pulled a fast one, tried to pull a [182] fast one

(Testimony of Fred E. Kalte.)

over on us, and I said, "Who?" And he said "We three," he said Ceriat, myself and Mr. Henry. I had a talk with Mr. Henry, and we decided we would pay Mr. Pollia one thousand dollars on account until we could get a report of the job and see how much Mr. Pollia had done, and how much money was coming to him, by contacting our superintendent on the job, who was Mr. Snyder, and a check was written out and given to Mr. Pollia.

Q. You are going a little too fast for me. When Mr. Snyder showed you the contract in Alameda you left and went to Los Angeles? A. Yes.

Q. You went in and got your copy of the filed contract? A. Yes.

Q. When you saw the same wording in there you took the matter up with Mr. Henry?

A. Yes.

Q. And the two of you discussed the matter between yourselves? A. Yes.

Q. Mr. Pollia was not there at that time?

A. No.

Q. He came down one morning a very few days thereafter? A. Yes.

Q. And the three of you got together in conversation, as I understand it, and Mr. Henry made a suggestion that Mr. Pollia was pulling a fast one on Mr. Ceriat, Mr. Henry, and yourself?

A. That is right.

Q. You are going a little too fast. Was that all there was in the conversation?

(Testimony of Fred E. Kalte.)

A. I do not recall.

Q. How long did the conversation last?

A. Maybe about ten minutes.

Q. It did not take ten minutes merely to say somebody made the suggestion that Mr. Pollia was pulling a fast one. Give us more of the conversation.

A. Well, I said, personally, "It stinks."

Q. Anything else?

A. We did not agree on it, at all. That is, [183] Mr. Pollia had an idea, and our idea was a little different. Mr. Henry and I felt that the item——

Q. I am not asking what you felt. I am merely asking you what did you tell Mr. Pollia.

Mr. Harloe: Mr. Kalte, Mr. Doyle is trying to get your best recollection. If you cannot remember the words give him the substance as you remember it, just what took place. That is all you want.

A. The sum and substance of it was that we told Mr. Pollia we felt that we were being gypped out of this extra he wanted, it was supposed to be in the contract, that was the intent of the contract, to include that in it, and the substance of the conversation was the meaning of that contract. What further went on I don't know exactly, but Mr. Henry told me to give Mr. Pollia a check for $1000.

Mr. Doyle: Q. At that point that you mentioned, Mr. Henry and yourself believed that the contract had that in contemplation, and having in mind that you felt that it stunk, and Mr. Henry's

(Testimony of Fred E. Kalte.)

statement you were having a fast one pulled on you, didn't you decline to make any payment to Mr. Pollia upon the ground that there was no meeting of the minds, that he was not entitled to it?

A. Not on those grounds, no.

Q. As a matter of fact, when you had that in mind, and Mr. Henry felt the way you testified he did, and you felt the way that you testified you did, as a matter of fact you issued a check for $1000?

A. But that was below what we thought was coming to him on the original contract.

Q. Irrespective of that, notwithstanding that matter, you did issue a check for $1000?

A. Yes.

Q. Isn't it true, also, that you told Mr. Pollia, or you thought [184] that for the moment Mr. Pollia was satisfied with $1000? A. No.

Q. What did he say?

A. He wanted the rest of it right away.

Q. What did you tell him?

A. I told him we would not give it to him until we had checked up thoroughly and found out how much was coming to him.

Q. Then I take it he left?

A. No, he asked for a note.

Q. And he was willing to discount the note?

A. He did not say anything about discount.

Q. He asked for a note? A. Yes.

Q. Did he come back the following morning?

(Testimony of Fred E. Kalte.)

A. I think it was all closed up that day.

Q. Isn't it true, Mr. Kalte, toward the end of the conversation between Mr. Henry, Mr. Pollia and yourself, it was agreed that you would finally pay it? A. No.

Q. Do you recall your deposition being taken in my office at San Francisco on October 15, 1941?

A. Yes.

Mr. Doyle: Have you got your copy of the deposition, Mr. Harloe?

Mr. Harloe: No, I have not. Just show it to him.

Mr. Doyle: Q. I will ask you to read——

The Court: Do you expect this witness to be here some time?

Mr. Harloe: Yes.

The Court: I think we will take our adjournment at this time. This case will be continued until Friday, the 20th, at 10:00 o'clock.

(An adjournment was here taken until Friday, February 20, 1942.) [185]

Friday, February 20, 1942
10:00 o'Clock A.M.

The Court: You may proceed.

FRED E. KALTE,

Recalled:

Cross-Examination
(resumed)

Mr. Doyle: Q. Mr. Kalte, when we adjourned Wednesday, you had testified that in the conversation in the company's office in Los Angeles, when Mr. Pollia was down there to get some money, that you thought the thing stunk, and you would look into it, is that right?

A. That is right.

Q. And you paid him some money that morning?

A. That is right.

Q. Then what did you tell him?

A. I don't remember the exact words, but I believe I said it looks like we are stuck, and we would have to pay it.

Q. Was there any debate about the idea, at all, or any words that passed between any of you—was there a friendly feeling?

A. I don't know as to that, I would not say.

Q. Isn't it true, Mr. Kalte, that toward the end of the discussion about Mr. Pollia's getting this money, and prior to Mr. Pollia leaving your office, didn't you take the initiative to phone another contractor in Los Angeles about getting Mr. Pollia a job on a United States field? Do you know Mr. Hummerdon? A. Yes, I do.

(Testimony of Fred E. Kalte.)

Q. Do you recall to your mind that you took the initiative about getting together Mr. Pollia and Mr. Hummerdon on another job?

A. Yes, sometime previously to this.

Q. I am talking about the morning in Los Angeles.

A. I don't remember whether it was that morning or some other time.

Q. You wouldn't deny taking up the phone and calling Mr. Hummerdon? [186]

A. No, I won't deny that.

Q. And it is true when you were in Los Angeles the morning of this conversation, that, as you said, you felt the letter was written in such a way that you would have to pay Mr. Pollia for the work in the pits?

Mr. Harloe: I object to the form of the question.

Mr. Doyle: I will change the question.

Q. Why did you say that you agreed to put up money under the mistaken idea that the money was due him?

Mr. Harloe: He did not say that.

Mr. Doyle: Q. Did you not know at that time about the money being due Mr. Pollia when he was in Los Angeles?

Mr. Harloe: Money due him for what?

Mr. Doyle: Q. Did you have any mistaken idea, or any doubt, whatsoever, upon the statement that Mr. Pollia brought in to you, which was prepared

(Testimony of Fred E. Kalte.)

by Mr. Snyder, in your office in Los Angeles about Mr. Pollia being entitled to any part of the money disclosed in that statement?

A. I did not see any statement from Mr. Snyder.

Q. Did you have any doubt in your mind, at all, or a mistaken idea about Mr. Pollia being entitled to any of the money that he was claiming was due him in Los Angeles?

A. Personally, I did not think it was due him.

Q. What did you give him the $1000 for?

A. We had not paid him the full amount of the contract yet, the original amount.

Q. How much was due upon the original contract? A. I don't know, exactly.

Q. Isn't it true that in looking over the agreement, it was your opinion at that time that Mr. Pollia did not have to do the work in the pits—I am talking about the morning in Los Angeles. [187]

A. I would say that according to the way I read the agreement it could be interpreted that way, but, personally, I did not think it was.

Q. The morning in Los Angeles, in any event, was the second time that you had paid any particular attention to the contract?

A. Yes, I would say that.

Q. And the first time was when Mr. Snyder called it to your attention up on the job?

A. That is right.

Q. When Mr. Snyder, as you say, originally

(Testimony of Fred E. Kalte.)

called your attention to this so-called ambiguity or discrepancy at the Base at Alameda, as to whether or not the work was up to the pits, or in the pits, when you saw the copy of the contract at the office why didn't you talk to Mr. Pollia about it the very first moment it was called to your attention?

A. I did right there, I am quite sure right in the office.

Q. To Mr. Pollia?

A. I don't remember exactly who were there, if Mr. Pollia was there that afternoon.

Q. Let me reframe the question and make it very definite, if I may. Mr. Snyder originally called your attention to the fact that Mr. Pollia was asking for payment for work that he, Mr. Pollia, had done in the pits. Is that true?

A. That is right.

Q. And when Mr. Snyder called that point to your attention, Mr. Snyder and yourself reached into the office files at the office and got this contract of May 28, 1940? A. That is true.

Q. And at that time you saw the words in the contract of May 28, 1940, "to the pit"?

A. That is right.

Q. Now, at that time and place, the very first moment that it was ever called to your attention, did you at that time and place discuss the matter with Mr. Pollia?

A. Truthfully, I cannot say whether I did, or not. [188]

(Testimony of Fred E. Kalte.)

Q. Then I take it that the first recollection that you have of discussing that point with Mr. Pollia was in Los Angeles?

A. I can say that we did at that time, but prior to it I could not say.

Q. When Mr. Snyder called your attention to this wording of the contract, was Mr. Pollia on the job at the Base at that time—did you see him on the job at the base at that time?

A. I was on the job so many times I don't remember he was there at that time, or not.

Q. Well, there was nothing to prevent you in any way from taking it up with Mr. Pollia the very first moment that that question was presented to you, was there? A. No.

Q. What about the work? Did you go out and dig pits, yourself? A. No, I did not.

Q. Do you know whether or not there was any work that had to be done in the pits at that time, or how far the work had advanced, or what stage it was in?

A. Oh, yes, the job was pretty well along.

Q. But it had not been completed?

A. No, it had not been completed.

Q. When Mr. Snyder called your attention to the fact did you go out and personally examine the work in the pits? A. Not personally.

Q. Mr. Snyder had informed you that the work was pretty far advanced?

A. Yes, he was our superintendent on the job, and he reported to me.

(Testimony of Fred E. Kalte.)

Q. When Mr. Snyder told you the work was pretty far advanced in the pit, and you had an idea that Mr. Pollia was around there, or could be found or gotten in touch with, you did not do anything about it?

A. No, not that I recollect. [189]

Q. The next thing you did was to leave San Francisco and go down to Los Angeles?

A. That is right.

Q. So, then, when this was called to your attention by Mr. Snyder, as to work in the pits, or to the pits, you knew at that time that considerable work had been done by Mr. Pollia in the pits, and yet you let Mr. Pollia continue to do the work, and said nothing about it?

Mr. Harloe: I object to that as argumentative, and not asking any question. Ask him what he did.

The Court: I think the last question should be reframed.

Mr. Doyle: Yes.

Q. When Mr. Snyder called your attention to the wording of the contract, Mr. Snyder advised you that considerable work had been done by Mr. Pollia in the pits, you went to Los Angeles?

A. Yes.

Q. When you left the Base at Alameda, it is a fact, is it not, that you did not communicate with Mr. Pollia about the wording of the contract?

A. No, I do not think I did.

Q. When you left Alameda, did you instruct Mr. Snyder to tell Mr. Pollia to hold up the job?

(Testimony of Fred E. Kalte.)

A. No, I did not.

Q. So that you left San Francisco for Los Angeles and let Mr. Pollia continue to do work when there was some question in your mind about the situation, isn't that true?

Mr. Harloe: I object to the form of that question.

Mr. Doyle: I will reframe it.

Q. You went to Los Angeles, and took no steps to stop Mr. Pollia from continuing to do that work?

A. Certainly not, the job had to be completed.

Q. Is that the only reason you let it go?

A. The only reason I can think of right now.

Q. Isn't it true, Mr. Kalte, that under the contract you were to [190] supply all material to Mr. Pollia?

A. Yes, that was the understanding.

Q. Isn't it true that under the contract there was considerable delay—Take out the word "considerable"—was there some delay in your forwarding some of the material to the Base for Mr. Pollia to work on?

A. There was a delay in receiving material.

Q. Isn't it true that Mr. Ceriat, who was construction superintendent at that time, had to go to Los Angeles to get supplies for Mr. Pollia, so that he could do the work?

The Court: If he knows.

A. No, I don't know if he went to Los Angeles to look for any material.

(Testimony of Fred E. Kalte.)

Mr. Doyle: Q. Did Mr. Ceriat ever talk to you in Los Angeles about getting material up to Mr. Pollia?

A. Well, he did not come down purposely for that. When he came down on other business he took that up with me.

Q. At least, Mr. Ceriat talked to you about getting material up to the Base so that Mr. Pollia could do his work? A. Yes.

Q. You do not recall any other reason, other than what you have said, that the work had to be completed, as to why you did not stop Mr. Pollia as soon as you found out about this trouble with the contract? A. That is all I recall.

Q. In any event, you permitted Mr. Pollia to do all the work, either under the original contract or the extra work orders, with the exception of the installation of the hose reels in the pits?

Mr. Harloe: I object to that question. The question is what he did.

Mr. Doyle: Q. Isn't it a fact—isn't this the truth and the fact, Mr. Kalte, that you permitted Mr. Pollia to continue to [191] do the work, either under your original contract, or the extra work orders, and he did do it, save and except the installation of the hose reels in the pits?

Mr. Harloe: If your Honor please, I object to that.

The Court: I think that question has been asked and answered a couple of times already.

(Testimony of Fred E. Kalte.)

Mr. Doyle: Q. Isn't it true, Mr. Kalte, that the first time you ever talked to Mr. Pollia about any wording of the contract was after you had obtained legal advice?

A. I think that was the only time I did talk to him about any discrepancy.

Q. When was it, with reference to the time that you obtained this legal advice that you first talked to Mr. Pollia about the discrepancy?

A. I think it was at Mr. Harloe's office.

Q. The fact is, when Mr. Pollia did not get the balance of the money he came back to San Francisco from Los Angeles?

A. I think that is where he went.

Q. Did you obtain legal advice before Mr. Pollia went to Los Angeles, or after? A. After.

Q. Did you come up to San Francisco then?

A. No, I did not.

Q. You received some legal advice in some manner, did you? A. That is right.

Q. And then you communicated with Mr. Pollia about the matter? A. I believe, legally, yes.

Q. About when was that?

A. After he presented his bill.

Q. Can you give me the approximate date?

A. I don't know whether it was in September or October. I don't remember the date.

Q. Mr. Kalte, isn't it true that Mr. Pollia had completed all of the work on the Base, with the exception of the installation of the hose reels in the

(Testimony of Fred E. Kalte.)

pits before you had obtained any legal advice, or communicated that advice to Mr. Pollia?

A. I could [192] not answer that question, I don't know.

The Court: Let me ask you, what do you mean by the word "Base"?

Mr. Doyle: The Base at Alameda. I did not use the full wording, I tried to shorten it up.

Q. You understood, when I said "Base," I was talking about the Alameda Air Base?

A. Yes, I understood that.

Mr. Doyle: No further questions.

Redirect Examination

Mr. Harloe: Q. The negotiations, as you understood, or as I understood you to testify, for the purpose of entering into this contract, were carried on by Mr. Ceriat and Mr. Pollia?

A. That is right.

Q. And Defendant's Exhibit B was a letter addressed to Flotation Systems from Mr. Ceriat prior to the entering into of the contract, was it not?

A. I never saw this prior to the contract.

Q. You never saw that letter?

A. Pardon me, yes, this one I did.

Q. This letter is dated May 23, 1940.

A. Yes.

Q. Did you read that letter and answer it?

A. I did, yes.

Q. Did you, personally, or Mr. Henry?

A. I, personally, answered it.

(Testimony of Fred E. Kalte.)

Q. You, personally, answered the letter?

A. Yes.

Q. And Defendant's Exhibit C, dated May 24, is this the answer that you wrote to Mr. Ceriat?

A. Yes, that is the letter I wrote in reply to this.

Q. In reply to that one? A. Yes.

Q. The letter that you received from Mr. Ceriat, had, among other things, the paragraph, "Install equipment in all pits except the feuling pits," and then named the pits. In your answer [193] thereto you mentioned the fact that he was to do certain other things, as welding and wrapping of the welding fittings and painting of pipe.

A. That is right.

Q. After that contract was reecived by you you were of the opinion that the contract contained all of the provisions that were mentioned in that letter, and your answer to it, were you?

A. I was of that opinion, yes.

Q. And the first time that any question arose in your mind as to whether the contract did or did not contain those provisions was when Mr. Pollia came down and demanded payment for work done in the pits? A. No.

Q. It was not?

A. The first time was when Mr. Snyder, at the Air Base, drew my attention to it.

Q. The first time was when Mr. Snyder informed you at the Air Base that Mr. Pollia had told him that he was not to do the work in the pits at that time? A. That is right.

(Testimony of Fred E. Kalte.)

Q. At that time you were still of the opinion that the contract provided that Mr. Pollia should do all the work in the pits? A. Yes.

Q. Did you, in any conversation with Mr. Pollia, after that question of doing the work in the pits arose, ever agree that he did or did not have to do that work under that contract? A. No.

Q. You did pay him $1000 when he went down to Los Angeles, didn't you? A. Yes.

Q. And it was pursuant to the letter of August 29, Defendant's Exhibit 7?

A. Is that Pollia's letter?

Q. Yes, that is the bill that he submitted to you.

A. Yes.

Q. The charge for work in the pits only comprised a small part of this demand, didn't it?

A. That is right. [194]

Q. And you paid him because you knew the Flotation was indebted to him more than $1000 for work actually done, excluding any question of work in the pits? A. That is right.

Recross Examination

Mr. Doyle: Q. Mr. Kalte, do you, of your own knowledge, know that the Flotation Systems actually paid Mr. Pollia for work that he did in the pits in the month of July?

Mr. Harloe: Just a minute, the witness has answered that he paid $1000 on that letter of Mr. Pollia, and the bill speaks for itself, and it contains items other than the work done in the pits,

(Testimony of Fred E. Kalte.)

and they paid him $1000 on account of the work that they believed that he was entitled to, excluding any question of the work that was done in the pits, and I do not think that is a fair question.

The Court: If he knows of his own knowledge he may answer the question.

A. Might I make this statement?

Q. Answer the question, and then make any explanation you want to.

A. Yes. We did pay for work done in the pits, because that was in the contract, and we paid him on account of the contract.

Mr. Doyle: Q. When you say that was in his contract, do you refer to the original contract?

A. To the original contract.

Q. Now, Mr. Kalte, in view of your last answer, when you say Mr. Ceriat sent down the first suggestion in letter form of an agreement between the Flotation and Mr. Pollia, you suggested some changes? A. Yes.

Q. You suggested some additions?

A. That is right.

Q. And you observed any proposed contract closely enough at that time to take up the question of an addition, did you?

A. That is right. [195]

Q. When Mr. Pollia's letter of May 28, 1940 came back signed by Mr. Pollia and Mr. Ceriat, did you at any time from that time on read that contract? A. I hastily glanced over it.

(Testimony of Fred E. Kalte.)

Q. Merely filed it, is that right?

A. Mr. Ceriat was our representative up on the job, and he had business experience in that line, and I felt he was very capable of drawing up a contract with Mr. Pollia.

Q. You did review the original proposed agreement and suggest an addition?

A. Yes, that is right.

Q. And you did review the contract of May 28, 1940, and filed it? A. Yes.

Q. Now, in making payments of accounts payable in your organization, do you sign any of the checks? A. I do.

Q. Did you observe in the course of time from May 28, 1940 to August 29, 1940, when Mr. Pollia came down to get some money, the checks that had been issued to Mr. Pollia in the interim?

A. Well, specifically, I did not pay special attention to those.

Q. At least, you signed the checks?

A. I did.

Q. And you knew the original contract was $16,040? A. Yes.

Q. And as you paid checks from May until August you were aware of the fact that there were some pretty good-sized checks in there?

A. That is right.

Q. Did the thought ever occur to you that you were beyond the $16,000 figure?

A. No, we have an auditing department that takes care of all of that.

(Testimony of Fred E. Kalte.)

Q. The auditing department buys the material, do they not? A. No, they do not.

Q. I mean your purchasing department.

A. That is right.

Q. And your auditing department, in due course of business arranges for payment of material that you purchase? A. It does. [196]

Q. What system is there in the organization for the charging of original contracts on your books?

Mr. Harloe: Now, if your Honor please, I do not want to object, but I cannot see any relevancy or materiality, or what bearing that has on the issues before your Honor, and I object to the question as immaterial, irrelevant, and incompetent.

Mr. Doyle: I will withdraw the question.

Q. Do you recall that the purchase order was set up in your books at $143,000?

A. I don't know whether it has ever been set up, or not.

Q. Did you ever set up the total amount of the main contract in your books?

A. I do not set up anything on the books.

Q. Do you ever check your books, personally?

A. I do not.

Q. Do you ever see any of the purchases for material that are being made for the job?

A. I do, yes.

Q. When you signed the purchase orders for materials under your order numbers 273, 274, 280 and 1207, what did you think you were purchasing?

(Testimony of Fred E. Kalte.)

Mr. Harloe: I object to that as immaterial. The contract provides that the Flotation Systems shall furnish the material, therefore we object to the question on the ground it does not make any difference where they purchased or how they purchased.

The Court: He may answer.

A. Just what it states on the order.

Mr. Doyle: Q. Will you read what it says?

A. "Install equipment in fueling pits, complete, tested and ready for operation at the Naval Air Station, Alameda, California, in accordance with specifications 9505, 10 pits in all. All equipment that is to be permanently installed will be furnished by us, tools and equipment to be furnished by you. Price to [197] be paid for this service is $77 per pit. This does not include electrical work."

Mr. Harloe: I move to strike out the answer as not pertinent to any issue before the Court.

The Court: For the present the motion will be denied.

Mr. Doyle: Q. On Orders 273 and 274, your name is on there? A. That is right.

Q. Was it your idea that Orders 273 and 274 were actually purchases of material under Order No. 1431, which was the original contract of $16,040?

Mr. Harloe: I object to that as argumentative, as well as calling for the conclusion and opinion of the witness. The papers speak for themselves.

The Court: The papers speak for themselves. as far as that is concerned.

(Testimony of Fred E. Kalte.)

Mr. Doyle: Q. Since the adjournment, have you looked for or endeavored to find the inventory that has been testified to that Mr. Snyder prepared before Mr. Pollia went to Los Angeles?

A. I have three of them in my file, and evidently they are not the ones that Mr. Pollia said they are.

Mr. Doyle: That is all.

Mr. Harloe: No further questions.

The Court: I do not know whether this witness will be prepared to answer this question, or whether it has been shown, but at the date of the contract what work was then known which had to be done within the pit, itself? Is that covered by the evidence?

Mr. Harloe: I think we can clear that up. I will put Mr. Snyder on. He is more familiar with that than Mr. Kalte.

The Court: I was wondering if it had been covered. [198]

Mr. Doyle: Q. Upon the occasion of any of your visits to the Navy Air Base at Alameda, upon any occasion, did you ever, personally, go out and observe the nature and the progress of the work?

A. I did, yes.

Q. Did you ever see Mr. Pollia out on the job?

A. Yes.

Q. Did you ever see Mr. Pollia in the pits?

A. Well, I can't remember any specific instance of seeing him in the pits. I saw his man in the pits.

Q. What was he doing? A. Fitting pipes.

(Testimony of Fred E. Kalte.)

Q. What kind of pipes?

A. Steel pipe, standard fittings.

Q. Did you ever talk to Mr. Pollia about the work that his men were doing in the pits upon any occasion that you ever saw them working in the pits?

A. Not specifically, that I remember. Our superintendent took all that matter up with Mr. Pollia. I just talked to him as a matter of acquaintance.

Q. Let me put it this way: When you were in Alameda a few days before August 29, 1940, what, in your opinion, was the amount of work that had been done by Mr. Pollia at that time, either outside of the pits or in the pits?

A. I could not answer that question.

Mr. Doyle: No further questions.

Mr. Harloe: Q. In any event, you never signed any extra work order for the installation of the fittings inside of the pits? A. No.

Mr. Harloe: That is all.

ARTHUR T. SNYDER,

Recalled for Defendant; (Previously sworn.)

Mr. Harloe: Q. Mr. Snyder, recalling that this contract entered into between Mr. Pollia and the Flotation Systems is [199] dated May 28, 1940; at that time the Flotation Systems had already entered

(Testimony of Arthur T. Snyder.)

into a contract with the United States Government for the installation of this work? A. Yes.

Q. And you had in your possession complete plans and specifications for the installation of that project?

A. That is correct, the plans and specifications.

Q. It was known as the gasoline distribution system?

A. It was known as the gasoline fueling and distribution system at Navy Air Station, Alameda, California. I believe that is the correct title.

Q. But all of this work that was contracted for between Mr. Pollia and the Flotation Systems, you had already contracted to do that for the United States Government? A. Yes, that is correct.

Q. In accordance with the plans and specifications? A. Yes.

Mr. Harloe: Is that what your Honor wanted?

The Court: The question that I suggested was as to what actual work had already been constructed, in addition to what would be required in the pits.

Mr. Harloe: Q. Had Flotation Systems done any work on the pits at the time that this contract had been entered into by Mr. Pollia?

A. Not pipe fitting work, pipe laying or the installation of any pipe fittings. We had installed the gasoline storage tanks, or were installing them under the ground, and we were also building these various concrete pits, but we had not done any pipe

(Testimony of Arthur T. Snyder.)

fitting work, at all, practically had no pipe fitters or tools on the job on the date the May 28th contract was entered into with Mr. Pollia.

Q. With reference to any extra work that was done, that was changed or designed by the authorities after Mr. Pollia had entered into the contract?

A. Well, our original plans and speci- [200] fications, as furnished by the Navy, showed in considerable detail all of the pipe, the standard fittings, the special fittings, and the connections inside of the pit, and the pipe work outside of the pit, and subsequent changes, change orders received from the Navy.

Q. But none of those changes had been received by you prior to the date that Mr. Pollia entered into the contract with the Flotation?

A. I do not believe so, Mr. Harloe. There may have been some discussion with the Navy engineers, but I am reasonably sure that none of the changes were a matter that had been definitely decided upon.

Q. Now, Mr. Snyder, going back to the Shanmac Company, you saw the cranes, or whatever the name of the equipment is that the Shanmac Company used there? A. Yes.

Q. They also were working for the Central Construction Company, were they not?

Mr. Stark: Who was?

Mr. Harloe: The Shanmac Company.

A. Mr. Harloe, if I may clarify the question, Mr. Pollia, as I understand, had a contract with the

(Testimony of Arthur T. Snyder.)

Central California Construction Company, that is the proper name, who had a contract with the Navy for the construction of the boathouse adjacent to our job, and the equipment in question, owned by Shanmac Company, was being used at various times on both the boathouse job and the Flotation Systems job.

Q. Do you know whether or not in any one day this equipment was used on both the Flotation Systems job and the boathouse job?

A. I would not want to say positively on that, I believe that it was, but my memory is not good enough to say absolutely.

Q. After this controversy arose between Mr. Pollia and the [201] Flotation Systems, you had many conversations with somebody connected with the Shanmac Company?

A. Yes, Mr. George Shannon and also Mrs. George Shannon.

Q. Mr. and Mrs. George Shannon?

A. Yes.

Q. Did you have conversations with them with respect to the amount of work that they had performed with Mr. Pollia on the Flotation Systems project? A. Yes, numerous times.

Q. You had conversations with them relative to the amount of work that they had performed for Mr. Pollia on the boathouse job?

A. That is right.

Q. Did you ask them to give you an account, or

(Testimony of Arthur T. Snyder.)

a description of the amount of work that they had done for you, or Flotation Systems, on your project? A. Yes.

Q. And were they able to do it?

A. No. I asked them several times to furnish me with an itemized, that is, the detail of the amount of work done for us, as distinguished from the amount of work done for the Central California Construction Company, and I said the Flotation Systems would stand responsible for whatever share of the work was done on our project.

Q. Were they ever, at any time, able to give you the amount of the work that was done, a statement of the amount of work that was done on the Flotation Systems job?

A. No, I never received any such segregation of the time.

Mr. Stark: I call your attention to the fact that your question was were they ever able to give it to you, and the answer was they never did.

Mr. Harloe: Withdraw that question.

Q. Did they ever give you one?

A. No, they did not.

Q. During the course of the work that was performed by Shanmac on the Flotation job, payments were made to Shanmac Company for [202] work that had been done on the Flotation job, had they not?

A. Might I explain how the payments were made?

(Testimony of Arthur T. Snyder.)

Q. First, tell us whether they were, or were not.

A. The payments were made through Mr. Pollia to Mr. Shannon.

Q. The payments were made through Mr. Pollia to Mr. Shannon? A. Yes.

Q. How do you know that payments were made by Mr. Pollia to Mr. Shannon?

A. Because we had no assurance that Mr. Pollia would pay the bill, and in order to protect ourselves we made out our checks to the order of Mr. Pollia and had Mr. Pollia endorse the checks in the proper amount over to Mr. Shannon before we released them.

Q. So that Mr. Pollia endorsed the checks over to Mr. Shannon upon your making them out?

A. No, the checks were made out in this way. As I recall, prior to the time certain payments were made to Mr. Pollia we asked Mr. Shannon how much money he had coming; we also asked several other concerns how much money they had coming from Mr. Pollia, and in making out a payment to Mr. Pollia we had a number of checks made out, some of these checks being in the amount that was owing these various companies, and then the checks were sent out to him at Alameda and at my request Mr. Pollia endorsed them payable to the order of them.

Q. The checks that were requested to be made out to Andrew Pollia, the amount of those checks were predicated by you upon the amount that Mr. Shannon told you Mr. Pollia owed him at that time, is that correct? A. That is correct.

(Testimony of Arthur T. Snyder.)

Q. And you had the checks made for that amount? A. That is right.

Q. What did you do with them?

A. We typed on the back of them, "Pay to the order of Shanmac Company," and then requested Mr. [203] Pollia to endorse them on the back, which he did, whereupon I gave the check to Mr. Shannon, who, in turn, gave a receipt.

Q. I will show you two of those checks, one dated July 8, in the amount of $695, and one of August 16, 1940 in the amount of $1213.43, and ask you if those are the checks in question?

A. Yes, I recognize the checks, photostatic copies, I should say.

Mr. Harloe: I offer these checks in evidence, with reference to the intervenor.

(The two checks were marked "Defendant's Exhibit E.")

Q. You were continuously on the project, there, as the work was progressing, were you not?

A. Yes.

Q. You had a pretty good knowledge of the amount of work which Mr. Shannon or the Shanmac Company did on the Flotation job?

A. Fairly well, yes, although I might say that I did not keep actual time on it. The transaction was between Mr. Shannon and Mr. Pollia; I did not keep a bookkeeping record of how many hours Mr. Shannon's machine worked for Mr. Pollia, or for the Central California Construction Company.

(Testimony of Arthur T. Snyder.)

Q. Was it or was it not your opinion that when the job was finished that the Flotation had practically paid to Mr. Pollia for Mr. Shannon's account practically all of the work that was done on the Flotation Systems by Shanmac Company?

Mr. Stark: That is objected to.

Mr. Harloe: Q. What is your opinion about the number of hours that the machine operated on this job?

Mr. Stark: That is objected to.

The Court: The objection is sustained.

Mr. Harloe: That is all.

Cross Examination

Mr. Stark: Q. Mr. Snyder, were you in charge of the job at [204] Alameda?

A. Not at the beginning, Mr. Stark.

Q. When did you go on the job?

A. Approximately March 15, 1940.

Q. Were you in charge on the 1st day of June, 1940? A. No.

Q. What was your official position?

A. Engineer.

Q. You had nothing to do with the time keeping, did you?

A. Yes. I explained in my former testimony that I had just been employed by the company as an engineer, and in order to acquaint myself with the methods of the company and the work they were doing, I was keeping the field office records during the period you refer to.

(Testimony of Arthur T. Snyder.)

Q. Money earned by Mr. Pollia under his contract was paid from time to time progressively?

A. Yes, there were three separate payments, as I remember, at the end of three consecutive months.

Q. This check, dated July 8, for $695, up to what date was that a payment to Pollia?

A. That was a part of the payment for work completed by him up to July 1.

Q. And the check for $1213.43, dated August 16, would be payment up to what date?

A. That would be for work completed up to August 1.

Q. Do you know whether or not the Shanmac machine worked on the Central California Construction job on June 18?

A. That is a little more than my memory is capable of. I saw the machine working from time to time, but it is impossible to remember the exact date.

Q. Your testimony is that you have no recollection now of any particular day or hours that the Shanmac Company machine worked on the Central California Construction Company job as distinguished from the Flotation Systems job?

A. No specific dates or specific hours, no. It was working there a large percentage of the time, for what dates and what hours, specifically, I could [205] not say.

Q. Is it not true, Mr. Snyder, that the Shanmac machine worked on the Flotation Systems job from August 1 until the 17th?

(Testimony of Arthur T. Snyder.)

A. I could not say definitely, no.

Q. Did you see it there in August?

A. As I recall, Mr. Shannon's machine, or the Shanmac Company's machine was in the vicinity either of the Central California Construction Company job or the Flotation Systems job at all times from May 28th, I should say, until sometime around the 1st of September.

Q. How far was it from the Central California Construction Company job to the work that was being done by the Flotation System?

A. Approximately 2500 feet.

Q. If the machine was working on the Central California Construction Company job and it was 2500 feet away from the Flotation job, you could tell at a glance whether or not the machine was doing that Flotation work or Central California Construction Company work, could you not?

A. Not always. There was one of our lines that went out to the pier, passing right by some lines that Mr. Pollia was laying for the Central California Construction Company. The main part of our job, where we installed our tanks and pits and so on, was about 2500 feet from the boathouse, and, as I say, the pipe lines very closely paralleled one another, and from the location of the Flotation Systems office, looking out of the window, it would have been impossible to tell down there on the pier what job the machine was working on.

Q. Did you have several piles of pipe?

(Testimony of Arthur T. Snyder.)

A. Yes, we had a stock pile.

Q. That pipe was to be used on the Flotation Systems job? A. Yes.

Q. How was it handled?

A. As I recall, Mr. Pollia had some kind of a truck, about a ton and a half, with a bar on the back [206] of it, and he would back up and load it on the truck.

Q. Wasn't the Shanmac machine used for the purpose of loading that pipe?

A. I do not recall, it might have been.

Q. You don't recall much about the use of this machine, do you?

A. You mean the Shanmac machine?

Q. That is the only one I am interested in.

A. I saw it day after day, working on our project, and working on the Central California Construction Company project.

Q. You said that this Exhibit, the check that was paid, the endorsement of which you said on, "Pay to the order of Shanmac Company," covered the period up to August 1.

A. I believe so, yes.

Q. If the machine operated on the job after August 1, it would be impossible for this check to have been in payment for that time?

A. I think you are right in that respect, that is, the check would not be in payment for work done on or after that date.

Q. If a portion of the time that he is claiming

(Testimony of Arthur T. Snyder.)

for is from August 1 until August 17, this check has no relevancy, at all, in so far as payment of that application is concerned, has it?

A. As to whether it has any relevancy or not is a matter I could not say. I believe that would be a matter of law, I don't know.

Q. And that check of August 16, 1940, which you testified paid only up until July 31, could not have been payment to the Shanmac Company for the operation of the machine from August 1 to August 17, could it? A. I suppose not.

Q. You know it could not have been?

A. It sounds logical.

Mr. Stark: We wish to offer in evidence, if your Honor please, the signed time cards for the operation of this machine. There is a group of nineteen cards which show the hours, the days, the operators, the oilers, the number of gallons of gas used, the number of the shovel, signed by the sub-contractor. [207]

Mr. Harloe: May I see those, Mr. Stark?

The Court: We will take our recess of ten minutes at this time, and you can look those over.

(After recess:)

Mr. Stark: We ask that they be marked in evidence.

Mr. Harloe: We object to them, in view of the previous testimony that no segregation was ever indicated showing the amount of work done on the Flotation project, and the amount of work that was

(Testimony of Arthur T. Snyder.)

done on the Central California Construction project. They do not show which job they were on. We object to them on the ground they do not show whether they were on the Flotation job or on the Central California Construction Company job. I have no objection to the offer in evidence, if they are received in evidence, that they show that Mr. Shannon's company did perform that amount of work for Mr. Pollia.

Mr. Stark: On this Flotation Systems job?

Mr. Harloe: No, they do not show that. That is the objection they do not show what he did on the Flotation job. There is no question, from the testimony, that the Shanmac Company performed work on the boathouse job for Mr. Pollia.

The Court: The cards speak for themselves, as to what they show. They may be admitted for what they are worth.

(The time cards are marked "Intervenor's Exhibit 3.")

Cross Examination

By Mr. Doyle:

Mr. Doyle: Q. Mr. Snyder, in response to a question before recess by Mr. Harloe you said that the work that Pollia was to do was all under the original contract, which included work in the pits, with the exception of F pits, which were extra work orders. Do you recall that?

A. I believe that is correct.

Q. At some stage in the proceedings you wanted

(Testimony of Arthur T. Snyder.)

some weldings done [208] in the pits, and so there will be no question about it, excluding F pits?

A. We have gone into that; if the welding was done outside of the pits for certain fixtures that were installed later in the pits.

Q. I asked you specifically, you wanted some welds done in the pits. I am not talking about outside of the pits.

A. There were some change orders that involved additional welds in the pits, yes.

Q. Did you ask Mr. Pollia to do the additional welding in the pits?

A. Yes, that work had to be done.

Q. Did you ask Mr. Pollia to do the welding in the pits?

A. We requested him to do the extra welds in the pits, is my answer to that.

Q. When you requested Mr. Pollia to do the extra welds in the pits, what did Mr. Pollia tell you?

A. He said he would not do it unless he had an order.

Q. All right, what did you tell him?

A. I asked him how much he would charge us for doing such extra work.

Q. Did you go back to your copy of your contract on file and point out to Mr. Pollia that the welding that you wanted done was in the original contract? A. No.

Mr. Harloe: Just a moment, I object to the

(Testimony of Arthur T. Snyder.)

form of that question, because the witness has testified that it was extra work.

A. We had no occasion to refer to the contract, because the particular welding that I asked Mr. Pollia to do was extra work, because of change orders we had received from the Navy.

Mr. Doyle: Q. Isn't it true, in any event, that Mr. Pollia told you that he would not do any welding in the pits?

A. No, that is not true. He said that he would not do the [209] extra welding caused by change orders.

Q. Well, then, Exhibit 12, the letter of August 1, 1940, Exhibit 9, August 7, 1940, and Exhibit 10, August 23, 1940, they specify extra work, lineal foot price, unit prices. Look at them.

A. Which do you refer to?

Q. All three of them. Do you recognize them?

A. Yes.

Q. Isn't it a fact that Mr. Pollia, the very first time any welding in the pits came up, told you that there had to be a separate charge for it?

A. No, I do not believe so.

Q. You do not believe so. Are you just guessing, or do you know?

A. I am reasonably sure. I cannot recall any question ever coming up as to whether Mr. Pollia was to do or was not to do the welding in the pits, as shown by the original plans and specifications, and there never was at any time any question. Any

(Testimony of Arthur T. Snyder.)

argument or discussion we had concerning extra work was caused by subsequent change orders as received by us from the Navy.

Q. Now, the extra work caused by the change orders, didn't the Flotation write this letter of August 23, 1940, Plaintiff's Exhibit 10?

A. That is entirely correct.

Redirect Examination

Mr. Harloe: Q. I will just ask you this general question: All of the work mentioned in those exhibits 9, 10, and 12, just shown you by Mr. Doyle, all of the work set forth on those was not in the original plans and specifications, was it?

Mr. Doyle: That is calling for an interpretation of the letter, and asking the witness to pass upon a question that your Honor has to pass upon.

Mr. Harloe: Q. You know of your own knowledge whether or not that work was originally in the plans and specifications, do you not? [210]

Mr. Doyle: The same objection.

A. Might I see the statement there, the statement of partial payment, before I answer that question? I don't know the number of the exhibit.

The Court: I will permit the question, subject to the objection.

A. The two orders to Mr. Pollia, I believe the two you have there, the letter dated August 23 and the letter dated August 7, the intent of those letters that they were caused by extra orders received from the Navy, and with regard to this statement

(Testimony of Arthur T. Snyder.)

of August 1, at the top of the statement is an estimate of the work completed on the original contract, and then in addition are set down additional items caused by these change orders as authorized by orders from us.

Mr. Harloe: Q. Mr. Snyder, I will show you a check dated July 9, 1940, made out to Andrew Pollia, and endorsed by him and endorsed by Shanmac Company, and a check of July 8th, payable to Andrew Pollia, and by him endorsed to Shanmac Company, for $695. Do you know why the check of $949.74 was given on July 9?

A. No, I don't know the exact reason.

Q. Mr. Snyder, prior to or about the time that these payments were made to Mr. Shannon, or Shanmac Company, did you have a conversation with either Mr. Shannon or Mrs. Shannon, with reference to the amount of money paid them by Mr. Pollia, and, if so, for what job it was?

A. Not at the time of the first payment we made to Mr. Pollia.

Q. Not at the time of the first payment?

A. No, not for work up to July 1; there was no question at that time. We simply asked Mr. Shannon how much money he had coming, and he gave us a statement, and requested that one of our checks to Mr. Pollia [211] be made out in that amount.

Q. You did have a conversation with Mr. or Mrs. Shannon, or both of them, did you, with re-

(Testimony of Arthur T. Snyder.)

spect to the amount of work they had done for Mr. Pollia? A. At a later date.

Q. At a later date? A. Yes.

Q. Do you remember approximately when that was?

A. I would estimate, as near as I can remember, sometime in September.

Q. Sometime in September? A. Yes.

Q. Where was that conversation held?

A. At the field office at Alameda.

Q. Do you know who was present?

A. Mr. Shannon, at one time—Mr. Shannon was present on the job practically at all times, and he and I discussed it at the Air Base numerous times, and one time Mrs. Shannon came over to the office at Alameda and called on me, and Mrs. Shannon and I discussed it in the presence of Mr. Frazier.

Q. What was said by Mrs. Shannon relative to the payment made by Flotation Systems to Shanmac Company for work done on both contracts?

Mr. Stark: To which we object as immaterial, irrelevant, and incompetent.

The Court: The objection is good.

Mr. Harloe: Q. Did you have a conversation with Mr. Shannon? A. Yes.

Q. Relative to payment for work that was done by him for Mr. Pollia on both jobs?

A. Yes, Mr. Shannon and I.

Mr. Stark: We submit he should identify when and where this conversation took place.

(Testimony of Arthur T. Snyder.)

Mr. Harloe: Q. Approximately when did this conversation [212] take place?

A. The conversation was at the Alameda Navy Air Base.

Q. Approximately when?

A. The first came up approximately in the month of September, 1940, I would say approximately the 15th of September, that is, the first discussion, and there were frequent discussions between Mr. Shannon and myself after that, also at the Navy Air Base.

Q. You, at that time, requested from Mr. Shannon a detailed statement of the number of hours that Mr. Shannon had worked on your job?

A. That is right.

Q. And he at that time never gave it to you, as I understood your testimony? A. No.

Q. Did he tell you why he could not give it to you?

A. He said that he had rented the machinery to Mr. Pollia, and as far as his interests were concerned he assumed that Mr. Pollia would pay him for it, and therefore he never kept a record of the exact location where the machine was used, whether Mr. Pollia used it on our job or on the Central Construction Company job.

Q. What did he tell you in that conversation relative to the payment by Flotation Systems for work by Shanmac Company on the job?

A. He said that the only money he had ever re-

(Testimony of Arthur T. Snyder.)

ceived for work on the Alameda Air Base was received on our check.

The Court: This is testimony that has already been covered.

Mr. Harloe: I do not think that has been brought out, it may have been.

The Court: The record will show if you have any doubt about it.

Mr. Harloe: It may be, but I think I had not brought it out. That is all.

Mr. Stark: Are you going to introduce the last check you [213] showed the witness?

Mr. Harloe: I will offer in evidence, if your Honor please, a check dated July 9, for $949.74, made payable to Andrew Pollia, and endorsed by Shanmac Co. by T. G. Shannon.

(The check was marked "Defendants' Exhibit F.")

Recross-Examination

Mr. Stark: Q. That check for $949.74 is dated July 9? A. Yes.

Q. What period of time would that have been paid for?

A. As I recall it, that was one of a number of checks that Mr. Pollia requested in payment, for his first partial payment, for work up to July 1.

Q. If the machine that Shanmac Company operated on the job in July, after July 1, this check could not have been a payment for the time after July 1?

(Testimony of Arthur T. Snyder.)

A. I do not believe so, Mr. Stark.

Q. You know so, don't you?

A. I am reasonably certain, yes.

Q. You have not the slightest idea as to the number of hours the machine worked on either the Flotation Systems job or the Central California Construction Company job, have you?

A. Oh, I could make a rough estimate of the number of hours they worked on both jobs, and also a very rough estimate on the segregation of the time between the two jobs.

Q. You kept no record of that, however?

A. I kept no actual record of it, it was not our business to do so.

Q. You say that you asked the Shanmac Company to get a statement at one time?

A. After this argument with Mr. Pollia came up.

Q. Did you get that statement?

A. No—I received a statement from Mr. Shannon, but Mr. Shannon admitted that the statement was for the balance of payment due him for all the work that he had done with his machinery at the Alameda Air Base. [214]

Q. Where is that statement?

A. I may have it in my files, there. I do not seem to have it here. I may have turned it over to Mr. Harloe.

Mr. Stark: Have you got it, Mr. Harloe?

Mr. Harloe: I am looking now.

(Testimony of Arthur T. Snyder.)

Mr. Stark: Q. You say that statement certified or showed that Mr. Shannon had been paid, or the Shanmac Company had been paid for all the work done at the Alameda Air Base?

A. The statement did not certify that, but when I questioned Mr. Shanmac that was the advice he gave me, and that was the reason that the bill was in dispute.

Q. Was the machine still on the job at that time?

A. At the time I received the statement?

Q. Yes.

A. I do not believe so. I think the work had been completed.

Q. What was the date of the statement?

A. Not having it here, I don't know.

Q. You know it would be very important in this litigation if what you say is true, it would be the end of the case, as far as Shanmac is concerned, wouldn't it?

Mr. Harloe: I object to that.

Mr. Stark: This witness has said my client told him he had received all of the money that was coming to him, and I am in the position that my client cliams that he had not received it.

The Witness: That is not the statement I intended to make, exactly, Mr. Stark.

Q. Let us get exactly what you intend to say.

Mr. Doyle: That was the witness' interpretation of the conversation.

(Testimony of Arthur T. Snyder.)

A. The statement I intended to make was that we received a bill [215] from Mr. Shannon's company for $1000 and some odd, I do not recall exactly, and Mr. Shannon advised us that this bill was paid —if this bill were to be paid it would pay him for all the work he had done on the Alameda Navy Air Base.

Mr. Harloe: We have found it.

A. You have found the statement?

Mr. Harloe: Yes.

Mr. Stark: Q. He told you that this was all he had coming?

A. He told us, as I just testified, that if he received the amount of that bill that would pay him for all the work he had done at the Alameda Air Base, that was all he had coming on both jobs.

Q. Exactly, if we received $1040.73, covered by this bill here in counsel's file, which has not been paid, we will receive all of the money that we have coming on this job.

A. On the Flotation Systems job and Central California Construction Company.

Q. No, on the Flotation Systems job.

A. No.

Q. You know it? A. No, I do not.

Q. I may have misunderstood you, but I understood you to say that Mr. Shannon told you that he had gotten all of the money that was coming to him.

(Testimony of Arthur T. Snyder.)

A. No, you misunderstood me. What I meant to say was, if he received that one thousand odd dollars that is on that bill that he would have received all the money.

Q. That clarifies it in my mind.

Mr. Harloe: Do you want to offer this in evidence?

The Court: Was this last document testified to by the witness offered in evidence?

Mr. Stark: I simply showed him a document which was given to me by counsel, which is an exact duplicate of my Exhibit No. 1, which was offered the first day of the trial. [216]

The Court: It is already offered in evidence?

Mr. Stark: Yes.

Mr. Harloe: Now, I am going to offer these two in evidence.

Q. I show you a bill made out by Shanmac Company to Andy Pollia, for work in the sum of $695, and on the bottom it says, "Paid in Full July 9, 1940." A. Yes.

Q. Is that the bill for which the check of July 8 was made payable? A. That is correct.

Q. Now, then, I show you a bill dated August 1, 1940, and it has on the bottom thereof, "Paid E. M. Shannon." Do you know who E. M. Shannon is? A. No, I do not.

Q. But, in any event, that is the bill for which the check of $1213.43 was paid?

A. That is right.

(Testimony of Arthur T. Snyder.)

Q. Did you ever receive any bill showing the amount of $949.74, paid through Pollia to Shanmac?

A. No.

Q. Covered by the check of July 9?

A. No, I did not.

Q. Now, these two bills that I have showed you, Mr. Snyder, set forth the days and hours of work?

A. Yes.

Q. Is there anything on these bills from which you can tell how many hours was work on the Flotation project, and how many hours was work on the Central California Construction project?

A. No, there is not. The bills were made out to Andrew A. Pollia, and there is no designation that I can see as to where the work was done.

Mr. Stark: Q. What is the date of those bills?

Mr. Harloe: One was June 28, and the other August 1. We offer these in evidence.

Mr. Stark: Are those the ones that were paid?

Mr. Harloe: Yes.

Mr. Stark: Q. Did I understand you to say you don't know [217] whether the machine had worked for you or for somebody else? A. Yes.

Q. What did you pay the bill for?

Mr. Harloe: Just a minute. That was not the testimony. The question I asked was, was there anything on those bills that would show the amount of work by hours, on the Flotation System, and the amount of work on the Central Construction Company.

(Testimony of Arthur T. Snyder.)

Mr. Stark: Let me reframe the question.

The Court: They may be admitted.

(The bill of June 28, 1940 was marked "Defendant's Exhibit G," and the bill of August 1, 1940, was marked "Defendant's Exhibit H.")

Mr. Stark: Q. You testified there was nothing on these two bills just handed you by your attorney to show what hours the machine worked for the Flotation System and the hours it worked for somebody else. A. That is right.

Q. Don't you know that all of the hours on that bill were for you?

A. We assumed that at the time we paid the bills, that they were.

Q. Because you paid him the money for it?

A. We assumed that, yes, but at a later time we were told otherwise by Mr. Shannon.

Q. At a later time you were told otherwise by Mr. Shannon? A. Yes.

Q. When was this conversation?

A. The period of time I received that information was sometime in the vicinity of September 15, 1940.

Q. Did you make any memorandum of that conversation?

A. I do not believe so, we went over it so many times.

Q. Look here, Mr. Snyder, your money was paid over to Mr. Pollia for the use of the Shanmac

(Testimony of Arthur T. Snyder.)

machine, money for the operation of [218] that machine, on some job that was a complete stranger to you. Isn't that right?

A. That is what we learned later, yes.

Q. Mr. Shannon told you that? A. Yes.

Q. He was the owner of the machine?

A. Yes.

Q. Did you make any record, or notes, or give any information to your employer to that effect?

A. Yes, I wrote and we discussed that, but I am not positive just what is in that correspondence file, that is two years ago. There may be something in that file if you want me to look.

Q. That was after the controversy arose, was it not? A. It was during the controversy.

Q. After you began to interpret the Pollia contract?

A. That was after the controversy over the Pollia contract had arisen.

Mr. Stark: That is all, Mr. Snyder.

Cross-Examination

By Mr. Doyle:

Mr. Doyle: Q. You say now that Mr. Shannon told you in some conversation that the bills in question were partly for the Pollia job, the Flotation Systems job, and partly for the Central California Construction Company job?

A. That is correct.

Q. Did you ask Mr. Shannon, or did you state to Mr. Shannon in that conversation that the Shanmac bills were only addressed to Pollia?

(Testimony of Arthur T. Snyder.)

A. I believe I did, yes.

Q. Did you tell Mr. Shannon at that time, or did you state to him why the California Construction Company job was not mentioned on that bill, also? A. Yes.

Q. What did he say?

A. He said that he was renting the equipment to Mr. Pollia and he assumed he would get that money, and he had no occasion to give any description, he merely addressed the bill to Mr. Pollia because he was doing the work for Mr. Pollia, [219] and he was not interested in where Mr. Pollia used his equipment, or what job he worked on.

Q. When you had that information from Mr. Shannon, did you ever talk to Mr. Pollia about this matter? A. Yes.

Q. What did he say?

A. He refused to give me any description of the time between the two jobs.

Q. When was that?

A. Along about that time, September 15, as I recall.

Q. Isn't it true, Mr. Snyder, that before you passed a Shanmac bill for payment that it had to have Pollia's O. K. for the work done on the Pollia job, or, putting it in another way, didn't any bill that you got from Shanmac bear Mr. Pollia's O. K.?

A. That is right. Mr. Pollia also had both checks.

(Testimony of Arthur T. Snyder.)

Mr. Doyle: I move that the latter part be stricken.

The Court: That may go out, that latter remark.

Mr. Doyle: Q. You say that there were changes in the plans; did I understand you correctly?

Mr. Harloe: I am going to object to this line of examination at this time, it has nothing to do with the testimony of the witness on the Shanmac bill. He has gone into that before.

Mr. Doyle: Mr. Harloe took him back and asked him about any changes in the plans and specifications.

Mr. Harloe: I will withdraw the objection.

Mr. Doyle: Q. Did I understand you to say that there were or were not changes in the plans and specifications?

A. There were changes in the Navy plans from time to time during the job, yes.

Q. Now, what were the changes in the plans, change of location, mechanical equipment, or what?

A. Well, the majority of the [220] changes in the plans were as to D pit.

Q. Would you call those mechanical changes?

A. Yes, I would call them mechanical changes.

Q. What do you mean by a mechanical change?

A. By mechanical change, I mean the original plans showed certain fittings, certain valves, certain special equipment to be installed and connected up in a certain manner.

(Testimony of Arthur T. Snyder.)

Q. What did those changes involve?

A. The change involved a few fittings, putting in additional pipe fittings over and above what the original plans indicated.

Q. When were those changes made?

A. I do not have the exact date.

Q. Approximately.

A. Well, there were quite a number of them.

Q. When was the first one?

A. The first change I would say came up approximately about the middle of June.

Q. Of 1940? A. Of 1940.

Q. In what pit?

A. I believe the first change that came up was in E pit.

Q. Did you ever talk to Mr. Pollia about those changes, and about the departures, so-called?

A. Oh, yes, we were in frequent conversation about all of these changes.

Q. What did Mr. Pollia tell you about that?

A. He said every time anything of this nature came up that was not in the plans and was not in the specifications, and he was not going to do it unless we gave him an order to do it.

Q. Did you give him an order?

A. Yes, it has been submitted in evidence.

Q. These changes were not in the original plans?

A. They were not shown on the original plans, no, they are not shown in detail.

Q. Are you interpreting the original plans?

(Testimony of Arthur T. Snyder.)

A. What do you mean? [221]

Q. I understood you to testify that when you were up there on the job you were very careful in looking at and construing the original plans.

A. Yes.

Q. These changes that you have just testified to, were they on the original plans?

A. No. There would have been no occasion for any order to be given if they had been.

Q. Isn't it a fact, Mr. Snyder, in view of your last answer, that those changes could not have been in contemplation and were not reduced to writing in the contract of May 28, 1940?

A. Those changes were not contemplated at the time that the original contract was signed.

Mr. Harloe: I do not want to make an objection, and I have no objection to your going on forever, but I want to make this statement, that we have admitted that those were extras, they were an extra charge, and we have given you credit for them as extra charges in addition to the contract.

Mr. Doyle: Q. When was the next change?

A. There were many changes, so many I could not state when.

Q. Give me any of the numerous other changes.

A. Well, one of the changes that came up about that time was a change in the D pit which involved the elevation at which the pipe line came into the pit, made it necessary to raise the elevation of the pipe line and do some additional fittings in this pit.

(Testimony of Arthur T. Snyder.)

That occurred somewhere around, I would say, between the 1st and 15th of August.

Q. Did you issue an extra order on that?

A. Yes.

Q. That was not on the original plans and specifications?

A. No, the original plans showed the pipe coming into this pit at one elevation, and subsequently we found out we had to bring it in at a different elevation. [222]

Q. That was the same type of order that you issued, 270, 281, 284, 1150, and 1207?

A. I would have to see that letter to verify it.

Q. That was Exhibit No. 10. Mr. Pollia told you he would not do the work unless he got an extra order on it, is that it?

A. That is right.

Further Redirect Examination

Mr. Harloe: Q. He told you he would not do the work because of the fact that it was not in the original contract? A. Yes.

Q. He was not going to do it under the original contract, and wanted an extra order for it?

A. Yes.

Q. And you gave it to him?

A. That is right.

Q. At the price he requested? A. Yes.

Further Recross-Examination

Mr. Doyle: Q. When he told you that was not included in the original plans and original con-

(Testimony of Arthur T. Snyder.)

tract, did you go into your office and check your copy of the contract and verify Mr. Pollia's claim?

A. I checked the plans, not the contract.

Q. Did you check the contract?

A. No, beause we assumed at all times that Mr. Pollia had entered into a contract to install this pipe work and pipe fittings as per plans, and we always referred to the plans and not the contract.

Q. Irrespective of your assumption, you could have checked your contract?

A. We could have, but we had no occasion to do so.

Further Redirect Examination

Mr. Harloe: Q. It could not have been in the original plans and specifications, could it?

A. No, because it was changed.

Q. Of course, it was a change in the plans and specifications at a later date? A. It was.

Mr. Harloe: That is all. [223]

Further Recross-Examination

Mr. Doyle: Q. Mr. Snyder, since adjournment have you personally looked for this inventory that you prepared for Mr. Pollia before Mr. Pollia left for Los Angeles?

A. Well, we have three inventories in our file, and there was one inventory that I thought was it, but Mr. Pollia denies it.

Q. Did you send down to the Los Angeles office to find out if they had one? A. No.

(Testimony of Arthur T. Snyder.)

Q. Did you check with the Los Angeles office to ascertain whether or not it was down there?

A. No. We have the files on the case, here, and to my knowledge there are no additional files in Los Angeles.

Mr. Doyle: That is all.

Mr. Harloe: That is all. That is the defendant's case, your Honor.

Mr. Doyle: We will recall Mr. Ceriat.

EUGENE CERIAT,

Recalled for Plaintiff in Rebuttal.

Mr. Doyle: Q. Mr. Ceriat, you were on the job at Alameda before this contract of May 28, 1940 was entered into? A. Yes.

Q. How long did you stay on the job in Alameda before you returned to Los Angeles?

A. I stayed on the job until—how do you mean?

Q. How long were you with the job?

A. Until I quit the job?

Q. Yes.

A. I think it was August 31, because I was going back and forth all the time.

Q. You were there from at least May 27, 1940, to your best recollection, until August 31, 1940?

A. Yes. [224]

Q. Now, when you left the job, what was the per-

(Testimony of Eugene Ceriat.)

centage of construction work that had been completed, either by Flotation or by Pollia?

A. The pipe work was all completed when I left the job, that is, nearly all completed, the pipe, and they were only starting to do the work in the pits.

Q. When you say they were starting to do the work on the pits, to whom do you refer?

A. The Flotation.

Q. All that remained was to install the special equipment? A. That is right.

Q. Do you believe that Mr. Pollia had completed 80 per cent. of the work when you left the job?

A. I do not think so.

Q. Now, you were in Los Angeles the morning that Mr. Pollia went down to get some money, weren't you? A. Yes.

Q. You were at the Flotation office?

A. Yes.

Q. Who was there when the question came up about this money?

A. I was in my office and they called me.

Q. Who are "they"?

A. Mr. Fred Kalte, and Jim Henry, and Pollia.

Q. What was the conversation when you came into Mr. Henry's office, or Mr. Kalte's office?

A. Well, they brought out the contract and talked about the difference in the contract, and after the conversation Mr. Henry said, after examining the contract they would be probably forced to pay Mr. Pollia.

(Testimony of Eugene Ceriat.)

Q. What did everybody say? Give us the substance of what Mr. Henry said, what Mr. Kalte said, what Mr. Pollia said, and what you, yourself, said.

A. Mr. Henry, I believe, asked me what I thought about the contract, and he said we would have to pay Mr. Pollia, he said Mr. Pollia is the only business man who knew about the contract and we did not.

Q. Anything else?

A. I think they gave Mr. Pollia a thousand [225] dollars, and asked him to come back the next day.

Q. Did you hear any statement by anybody at that conversation that Mr. Pollia was gypping them, or chiseling? A. No, I did not.

Mr. Doyle: Take the witness.

Cross-Examination

Mr. Harloe: Q. I will show you Defendant's Exhibit No. B, Mr. Ceriat. Is that your signature at the bottom of it? A. Yes.

Q. This is a letter written by you to the Flotation Systems on May 23, 1940?

A. Yes. It was not written by me, but I signed it.

Q. You signed it, anyhow? A. Yes.

Q. It was written at your direction?

A. Yes.

Q. Now, in this letter you say, "We have just received another bid from Mr. Pollia, who gave

(Testimony of Eugene Ceriat.)

us the previous bid of 89 cents per foot for laying all gasoline and water lines as follows."

A. Yes.

Q. "He proposes to do all the pipe work on this job, complete and according to Naval inspections."

A. Yes.

Q. "Including installation of all water piping and fittings, installation of all gasoline piping and fittings, including welding. Furnish and install all 12-inch clay pipe and fittings, complete, for the drain line at the total depth of 6 feet; for each extra foot in depth add $1.60 per cubic yard of additional dirt removed." A. That is right.

Q. "Install equipment in all pits."

A. That is right.

Q. "Except the fueling pits."—those were the pits that were marked "F" that were not in his contract? A. Yes.

Q. "Complete, including the installation of small tanks, including one pit A, one pit B, two pits C-2, 8 pits D, and 16 pits E. [226] All of this work is to conform strictly to the plans and specifications. He will furnish all equipment, welding tools, rock subbase under piping and back-fill. He proposes to do this work for a total lump sum price of $16,040. In effect, this bid takes care of everything outside of burying tanks, complete work, electrical work and installation of special equipment in pit F." A. Yes.

(Testimony of Eugene Ceriat.)

Q. Under this proposal he made you he did not propose to do any work in pit F, which were the fueling pits. Is that correct? A. Yes.

Q. At the bottom of the letter there is a reference to union regulations, that has nothing to do with the draft of the contract, that is so, is it not?

A. Yes.

Q. It says, "We find that the union regulations here will require that we employ a local steamfitter to lay out the steel pipe, in addition to a qualified welder to do the actual welding."

A. Yes.

Q. Now, Mr. Ceriat, pursuant to that letter which you wrote to Flotation Systems, you got a letter back signed by Mr. Kalte, didn't you?

A. That is right.

Q. This is a copy of the letter is it?

A. Yes.

Q. It says, "We have just received your letter regarding the quotation of Mr. Pollia for the sum of $16,040 for doing all the pipe work, ditching, etc." A. Yes.

Q. Then it says, "After a conference, we find that you should have Mr. Pollia write up a contract in triplicate immediately, stating everything clearly, also including the wrapping of pipe joints after welding, also the wrapping of the welding fittings and painting of pipe in the pit boxes outside of fueling pits, which we understand we are to do." Now, in the contract [227] you have drawn

(Testimony of Eugene Ceriat.)

up you did provide for the welding, as suggested there, didn't you?

Mr. Doyle: Read the rest of it.

Mr. Harloe: Q. "In other words, if you are thoroughly satisfied with the wording of his contract and that everything is included that you think should be, you can forward us the copies for signature and return one copy to him."

A. Yes. When I received that letter I asked Mr. Pollia to draw up a contract.

Q. You asked Mr. Pollia to draw the contract?

A. Yes.

Q. Thereupon, after this contract was drawn up it was sent down to the Flotation Systems, was it not, Plaintiff's Exhibit No. 2? A. Yes.

Q. On the second page this "Accepted by Eugene Ceriat, Date 5/28/40," that is your signature?

A. Yes. I asked him to draw this contract.

Q. Now, then, Mr. Ceriat, this contract provides for the welding and the wrapping of joints and for the "painting of all piping installed by us inside of pit boxes A, B, C, D, and E," as suggested in the letter received from Mr. Kalte, didn't it?

A. Yes, but I don't know why they changed the wording to all piping to the pit. I believe——

Mr. Doyle: Just a minute.

Mr. Harloe: Let him finish.

Mr. Doyle: He stated "I believe." I move to

(Testimony of Eugene Ceriat.)

strike that out as not responsive to the question.

Mr. Harloe: How do you know it is not responsive? I asked him the question.

Mr. Doyle: He has answered your question.

Mr. Harloe: I ask that the witness be permitted to answer [228] the question.

Mr. Doyle: He has already answered it.

Mr. Harloe: That is your interpretation. May the witness be permitted to complete his answer?

The Court: I will permit it subject to the motion.

Mr. Harloe: Suppose I withdrew that question and ask it over again.

Q. Mr. Ceriat, this letter that you received from Mr. Kalte after you had sent down your letter stating what Mr. Pollia proposed to do, and that letter stated, as you have already testified, that you should have Mr. Pollia provide in his contract that he should paint the fittings inside of the pits and in the boxes, and also wrap the welded joints, that you provided for in this contract, "including welding and testing all joints and all connections to pit boxes."

A. To pit boxes—all connections to pit boxes.

Q. What does it mean? It says, "welding and testing all joints and all connection to pit boxes."

A. That is right.

Q. Welding and testing all joints and all connections to pit boxes? A. Yes.

Q. Now, it also provides for the wrapping of the joints, doesn't it? A. To the pits.

(Testimony of Eugene Ceriat.)

Q. Wrapping of joints—is there any joint wrapping inside of the pit boxes?

A. I do not think so.

Q. Mr. Ceriat, you knew that in your letter to Mr. Kalte, stating Mr. Pollia's proposal, that he proposed to do all the fittings in the pit boxes, didn't you? A. Yes.

Q. There was no question in your mind that that is what he agreed to do, is there?

A. Well, there was not in my mind, no.

Q. There is no question in your mind, that that is what he agreed [229] to do—your conversations and negotiations were with him—when you wrote this letter to the Flotation, that he agreed to put all the fittings in the pit boxes?

A. No.

Mr. Doyle: You asked the witness if that was in his mind and he said no.

Mr. Harloe: Let us go back to it again.

Q. If you say "No," why did you write in that letter down to the Flotation Systems, "Install equipment in all pits." Answer this question first. If you had no conversation with Mr. Pollia about installing equipment in the pits, why did you put it in the letter that he proposed to do it?

A. It would be my proposal to Mr. Pollia.

Q. It would have been your proposal to Mr. Pollia. Your proposal to Mr. Pollia was that he put all the equipment in the pits?

A. It would be up to him to do that.

(Testimony of Eugene Ceriat.)

Mr. Doyle: Q. Did he accept your proposal as to the work that you wanted him to do, the work in the pits? A. No.

Mr. Harloe: Q. Don't you say he proposed to do that? A. No, I proposed to do that.

Q. No, you did not. I will read the letter again. I will be fair with you. It says, "He proposes to do all the pipe work on this job, complete and according to Naval inspection, including installation of all water piping and fittings. Installation of all gasoline piping and fittings, including welding. Furnish and install all 12-inch clay pipe and fittings complete for the drain line, at the total depth of 6 feet; for each extra foot in depth add $1.60 per cubic yard of additional dirt removed. Install equipment in all pits." A. Yes.

Q. You wrote that, didn't you? A. Yes. [230]

Q. And you wrote that because you had a conversation with Mr. Pollia that that is what you wanted him to do?

A. That is what I wanted him to do.

Q. Why did you say he proposed to do that if he did not?

A. Well, I don't remember exactly, but that is the proposal I sent in to the Flotation, and then when they told me to have Mr. Pollia draw the contract and explain everything that he wanted to do, I asked Mr. Pollia to draw this contract, and we started discussing it, I had my own contract, which I had in longhand writing there, which I

(Testimony of Eugene Ceriat.)

suggested to Mr. Pollia, and Mr. Pollia did not accept it. So, finally I was very busy with my other construction work, and Mr. Snyder was working with the mechanical work, and more familiar with it, so I left it with Synder and Mr. Pollia to get together to draw a contract satisfactory to both, and if I remember right they got together and settled together what they were going to do.

Q. They settled together what they were going to do?

A. Yes, Mr. Snyder and Mr. Pollia.

Q. Then you say Mr. Snyder's testimony is all wrong when he said he had no negotiations with Mr. Pollia for the doing of this work?

A. Mr. Snyder had negotiations with him to draw the final contract—Mr. Snyder and Mr. Pollia, I was not even present then.

Q. But when you mentioned that Pollia was to install the equipment in all pits, you were in charge of the work at that time, weren't you?

A. That is right.

Q. You were the one that wrote to them about the contract? A. Yes.

Q. You told them that Mr. Pollia proposed to do that, didn't you?

A. He proposed to do that.

Q. He had proposed to you he would do that, hadn't he? A. Yes. [231]

Q. And you wrote it to Flotations, because he had proposed it? A. That is right.

Mr. Harloe: That is all.

The Court: We will take our recess until two o'clock.

(A recess was here taken until 2:00 o'clock p. m.) [232]

Afternoon Session
2:00 O'clock P. M.

ANDREW A. POLLIA,

Recalled by Plaintiff in Rebuttal.

Mr. Doyle: Q. Mr. Pollia, you heard Mr. Snyder testify with reference to the items contained in Exhibit B, attached to the Answer of the Defendant Flotation Systems, as to the hose reels, lumber purchased, damage to tools and equipment, etc., in the sum of $705.72. That item on that list of Exhibit B, the installation of the hose reels was not done by you, was it, in the sum of $150?

A. That is what they have charged up against me.

Q. Did you damage any of the equipment?

A. No.

Q. Now, the hose reels were to be installed in the pits when they were received? A. Yes.

Q. And they were not installed by you by reason of the fact that they had not been received?

A. Yes.

Q. You told the Flotation Systems when they received them you would install them?

A. Yes.

(Testimony of Andrew A. Pollia.)

Q. Were you ever advised that they had been received? A. No.

Q. And you did not install them for that reason?

A. That is right.

Q. You heard some testimony about some changes in the plans and specifications. Were there any changes in the plans and specifications?

A. No, there was not.

Q. Have you a blueprint covering some of the work in this case? A. Yes.

Q. By the way, where did you get that blueprint? A. Mr. Snyder gave it to me.

Q. When did you get it?

A. Sometime after I started work on [233] the job.

Q. Now, referring to the blueprint that you have in your hand, will you disclose to his Honor on the blueprint what diagram corresponds with this diagram on 1210-43-3?

A. This diagram, here was prepared by Mr. Snyder, and it is identical to the one prepared by the Bureau of Yards and Docks.

Q. Were there any changes in either one of these?

A. The only change that was made was that the Flotation made a change in the equipment; it had to be installed identically the way the Bureau of Yards and Docks designated it.

Q. In other words, the blueprint was prepared by Mr. Snyder in accordance with the original?

(Testimony of Andrew A. Pollia.)

A. In strict accordance with the original plans.

Q. What is the date on this blueprint?

A. It is dated May 15, 1940.

Q. That was before you entered into the contract of May 28, 1940? A. Yes.

Q. When was there mention made about the changes in that equipment, when did that first come up—about when did it first come up?

A. A few of these pits were constructed, and the Aqua man was ready to install some special equipment.

Q. What happened?

A. They required some nipples, and flanges installed inside of the pits.

Q. Who were "they"?

A. The Flotation Systems.

Q. Was that mentioned to you?

A. They came to me and asked me to install these 8-inch nipples and flanges and 6-inch nipples and flanges.

Q. Who was "they"? A. Mr. Snyder.

Q. When Mr. Snyder came to you the first time and asked you to make these installations, what happened?

A. I asked him who [234] was going to pay for it.

Q. What did he say?

A. He said, "Well, give us a price and we will give you an order to do the work."

Q. Did you give him the price? A. Yes.

(Testimony of Andrew A. Pollia.)

Q. Did you get some order to do the work?

A. Yes.

Q. I will show you now Plaintiff's Exhibit 12, dated August 1, 1940, Plaintiff's Exhibit 9, dated August 7, 1940, and Plaintiff's Exhibit 10 dated August 23, 1940. Will you please explain these extra work orders in connection with your conversation just related with Mr. Snyder about the extra work?

A. The first extra work ordered was as shown on my August 1 statement, which related to these 8-inch and 6-inch nipples installed in pits, known as pits E; then from then on additional work orders were given to complete other work in the various pits. On these others in Exhibit 9 and 10, the first one was in July, which we rendered a bill for the work performed in July, which we were paid for in the early part of August.

Q. Every time extra work came up you got an extra work order? A. Yes.

Q. You prepared a statement on August 29?

A. Yes.

Q. Plaintiff's Exhibit 11? A. Yes.

Q. That was the time you went down to Los Angeles to get some money? A. Yes.

Q. Your original contract price was $16,040?

A. Yes.

Q. Now, the work that you did up to that time on the extra work orders, according to the statement that you prepared, showed that there was a

(Testimony of Andrew A. Pollia.)

balance due you of how much money at that time?

A. Do you mean as to the contract, or as to the extra work orders I got?

Q. Both as to the contract and work orders when you rendered this [235] statement?

A. This statement making application for payment No. 3, the balance on the contract entered into May 28, 1940 to me was $2154.89. During the month of August I installed extra $208 on one, $165, and one of $107.60, and some wrapping of some pipe joints covered by a letter issued August 23, 1940, of $1760, the rental of the Shanmac crane to the Flotation Systems for $404, the statement of work done to date in A pit, $163.95, work done up to date in B pit, $163.95, the complete work done to date in C pit, two of them, $160.50, complete work done in D pit, eight of them, $1233.40, and complete work done in E pit, 16 of them, $892. That made the amount due of $7493.14. They advanced me on payroll $1574, leaving the amount due of $5919.14.

Q. Deducting the extra work orders from the amount that was due you when you went down to Los Angeles, did the Flotation Systems owe you money, or did you owe the Flotation Systems money?

A. Well, if I did not have the money due me on the extra work orders I would have owed the Flotation Company money when I presented this application for payment No. 3.

(Testimony of Andrew A. Pollia.)

Q. Was there any question raised about that?

A. No.

Q. That was the day you got the $1000?

A. Yes.

Q. When you had this conversation in Los Angeles about this statement of August 29, 1940 and the inventory that had been prepared for you, did Mr. Kalte, Mr. Henry and yourself and Mr. Ceriat discuss it at the time? A. Yes.

Q. You heard Mr. Kalte's testimony about the conversation you had down there about that money?

A. Yes.

Mr. Harloe: If your Honor please, I do not want to object, but this is not rebuttal, this was gone into in the case in chief. He testified all about that meeting, and everything else, [236] and there is no rebuttal to it, and I object to it on that ground.

The Court: Unless it is directed to certain testimony of the witness.

Mr. Doyle: I am coming to that, your Honor, having laid that foundation.

Q. You heard Mr. Kalte testify that he thought that they were being chiseled or gypped. Did you hear that testimony? A. Yes.

Q. Was that said?

A. Mr. Kalte never said that.

Q. When did you complete your work?

A. August 1.

Q. Was it August, or October?

A. October 1.

(Testimony of Andrew A. Pollia.)

Q. Do you know, as a matter of fact, that on October 1, 1940, your attorney, Mr. Tamba, wrote a letter to Mr. Harloe and advised Mr. Harloe that the work had been completed? A. Yes.

Mr. Doyle: Have you got that letter, Mr. Harloe?

Mr. Harloe: What date?

Mr. Doyle: October 1, 1940.

Mr. Harloe: I think so.

Mr. Doyle: Q. While Mr. Harloe is looking for that, Mr. Pollia, isn't it true that not only was there not such a conversation about gypping or chiseling, but that Mr. Kalte phoned to a Mr. Hamilton to get you a job? A. Yes.

Q. Who was he?

A. He was connected with the Contintental Pipe & Engineering, I believe, he is one of the owners, and they had undertaken to do all the pipe line work at the Hamilton Air Base, and Mr. Kalte arranged for me to go over there and discuss it with him.

Mr. Doyle: Have you the letter of September 25, 1940, from Mr. Tamba?

Mr. Harloe: No, I have not got that, Mr. Doyle.

Mr. Doyle: Q. Pursuant to Mr. Tamba's instructions to you [237] when you completed this job, he wrote this letter to Mr. Harloe?

A. Yes.

Mr. Harloe: Are you offering that in evidence?

Mr. Doyle: Yes.

(Testimony of Andrew A. Pollia.)

Mr. Harloe: I object to it as immaterial, irrevelant, and incompetent. It in a communication between attorneys in relation to settling a case. It is addressed to me and not to the Flotation Systems at all. If it is addressed to me it would not be binding on them, and therefore, I object to it. I do not see the relevancy of it, I do not want to clutter up the record. It is a letter from Mr. Tamba to me, informing me that the work had been completed.

The Court: Is there any other matter than that that you want?

Mr. Doyle: I think we could have Mr. Tamba come in and testify.

Mr. Harloe: He would not testify. How could he testify to what Mr. Pollia told him, not in our presence, and then writing me a letter? If you want a stipulation, I will stipulate there is a statement by Mr. Pollia that he finished his contract, save and except the installation of some hose reels that he did not install by reason of the fact that the Flotation Systems did not have the material on hand to install.

Mr. Doyle: That is all we want.

Mr. Harloe: If you want that you can have it.

Mr. Doyle: No further questions—Might I interrupt for just a moment? In view of that stipulation, Mr. Pollia, when was the first time that you heard any question about whether or not you had completed the work?

(Testimony of Andrew A. Pollia.)

A. This morning, here in court.

Mr. Doyle: That is all. [238]

Cross Examination

Mr. Harloe: Q. I show you these orders 273 and 274, that was entirely extra and separate from any work under the contract—entirely separate—is that right? A. Yes.

Q. Now, these other work orders, is it your contention, Mr. Pollia, that the work that is mentioned in those work orders was shown on the plans and specifications? A. What is that again?

Q. I am asking you, do I understand you to testify that the work done on these extra work orders was shown on the plans and specifications?

A. Oh, no.

Q. Then I misunderstood you. The work done on these extra work orders is not shown on these plans and specifications? A. No.

Q. They are extra work for which you were entitled to be paid at the prices agreed on between you? A. Yes.

Q. Coming to your letter of August 29, "Complete work in pits A, B, C, D, and E."

A. Yes.

Q. Was the work done by you as shown in your statement shown on the plans and specifications?

A. Was the work done by me?

Q. Yes. I am not trying to mislead you. You actually did that work?

(Testimony of Andrew A. Pollia.)

A. Yes, I did that work.

Q. Now, was that shown on the plans and specifications, or on that blueprint?

A. That was shown on these plans.

Mr. Harloe: That is all.

Mr. Doyle: That is all. Plaintiff rests.

Mr. Harloe: The defendant rests.

Mr. Stark: The intervenor rests.

The Court: You may proceed with the argument.

[Endorsed]: Filed Dec. 23, 1942. [239]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Flotation Systems, Inc., a corporation, and United States Fidelity and Guaranty Company, a corporation, defendants above named hereby appeal to the Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action on the 1st day of July, 1942.

JOHN D. HARLOE
Attorney for Appellants
1005 deYoung Building,
San Francisco, California

[Endorsed]: Filed Dec. 23, 1942. [240]

[Title of District Court and Cause.]

DESIGNATION OF RECORD

Appellants designate for inclusion the complete record and all the proceedings and evidence taken in the action.

Points relied upon by appellants:

The evidence is absolutely insufficient to sustain the judgment and the Court erred in the interpretation of the contract.

JOHN D. HARLOE
Attorney for Appellants

[Endorsed]: Filed Dec. 23, 1942. [241]

[Title of District Court and Cause.]

STIPULATION RE RECORD ON APPEAL

It is hereby stipulated and agreed by and between the parties hereto that the record on appeal of the above-entitled case shall consist of the Complaint and the Answer thereto, the Complaint in Intervention and the Answer thereto and the testimony of the witnesses, and the Bill of Particulars.

Dated: Jan. 5th, 1943.

JOHN D. HARLOE
Attorney for Appellants
J. J. DOYLE
Attorney for Appellee

[Endorsed]: Filed Jan. 7, 1943. [242]

District Court of the United States
Northern District of California

CERTIFICATE OF CLERK TO TRANSCRIPT OF RECORD ON APPEAL

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 242 pages, numbered from 1 to 242, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case of United States for use of Andrew Pollia, Plaintiff, Flotation Systems, Inc., a corporation, et al. No. 21905-W, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of Thirty-six Dollars and Fifteen Cents ($36.15) and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 30th day of January, A. D. 1943.

[Seal] WALTER B. MALING
Clerk
WM. J. CROSBY
Deputy Clerk

[Endorsed]: No. 10359. United States Circuit Court of Appeals for the Ninth Circuit. Flotation Systems, Inc., a corporation, and United States Fidelity and Guaranty Company, a corporation, Appellants, vs. United States for use of Andrew Pollia, T. G. Shannon and B. W. Mackie, co-partners doing business under the fictitious name and style of Shanmac Co., Appellees. Transcript of Record Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed February 1, 1943.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 10359

FLOTATION SYSTEMS, INC.,

Appellant,

vs.

UNITED STATES for use of ANDREW POLLIA,

Respondent.

POINTS RELIED UPON BY APPELLANT

I

Erroneous interpretation of the contract materially effecting the rights of the parties.

II

That the evidence is insufficient to support the findings or the judgment.

JOHN D. HARLOE
Attorney for Appellant

[Endorsed]: Filed Feb. 5, 1943. Paul P. O'Brien, Clerk.

No. 10,359

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

FLOTATION SYSTEMS, INC. (a corporation), and UNITED STATES FIDELITY AND GUARANTY COMPANY (a corporation),

Appellants,

vs.

UNITED STATES for use of ANDREW POLLIA, T. G. SHANNON and B. W. MACKIE, co-partners doing business under the fictitious name and style of Shanmac Co.,

Appellees.

APPELLANTS' OPENING BRIEF.

JOHN D. HARLOE,
De Young Building, San Francisco,
Attorney for Appellants.

FILED
APR 14 1943
PAUL P. O'BRIEN,

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No. 10,359

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

FLOTATION SYSTEMS, INC. (a corporation), and UNITED STATES FIDELITY AND GUARANTY COMPANY (a corporation),

Appellants,

vs.

UNITED STATES for use of ANDREW POLLIA, T. G. SHANNON and B. W. MACKIE, co-partners doing business under the fictitious name and style of Shanmac Co.,

Appellees.

APPELLANTS' OPENING BRIEF.

JURISDICTIONAL FACTS.

This is a suit in the name of the United States for the use of Andrew Pollia, as sub-contractor against the Flotation Systems, Inc., a corporation, general contractor, and United States Fidelity Company, a corporation, sureties on the bond of Flotation Systems, Inc.

Flotation Systems, Inc., were the general contractors for the United States in the installation of a certain

gasoline distribution system at Alameda, in the State of California, and as such general contractor entered into a sub-contract with Andrew Pollia.

The jurisdiction of the District Court to hear and decide this case is under Title 40, U. S. C. A.,

Sec. 270a, enacted Aug. 24, 1935, c. 642,
Sec. 1, 49 Stat. 793, and
Sec. 270b, enacted Aug. 24, 1935, c. 642,
Sec. 2, 49 Stat. 794, Federal Rules of Civil Procedure.

STATEMENT OF THE CASE AND PLEADINGS.

Flotation Systems, Inc., were the general contractors for the installation of the gasoline distribution system at the Naval Air Base in Alameda, California. As such general contractors, it entered into a sub-contract with Adrew Pollia for the installation of the gasoline and water pipes as shown on the plans and specifications of the contract between Flotation Systems, Inc., and the Naval Department of the United States.

As the work progressed certain changes were made by the naval authorities and Andrew Pollia as sub-contractor was given extra work orders for the doing of this extra work. After the work had progressed for some time, a question arose as to the interpretation of the contract between the parties. Andrew Pollia claimed that under the contract he was not required to do any work in the pits and Flotation Systems, Inc., claimed that all work shown in the plans and specifications had to be performed by Pollia under his contract.

This action was filed by Andrew Pollia on the 21st day of June, 1941. (R. 2.) A bill of particulars was demanded of and furnished by Andrew A. Pollia and filed on the 1st day of August, 1941. (R. 6.) The answer of Flotation Systems, Inc., was filed on August 8th, 1941. (R. 8.) On September 29th, 1941, T. G. Shannon & B. W. Mackie, copartners doing business under the fictitious name and style of Shanmac Co., were granted leave to intervene. (R. 16.) Complaint in intervention was filed September 29th, 1941. (R. 12.) Flotation Systems, Inc., answer to complaint in intervention was filed October 8th, 1941 (R. 23), and the cause was heard before the Court, Honorable Frank H. Norcross, presiding, February 17th, 18th and 20th.

On June 12th, 1942, the Court filed its memorandum decision. (R. 26.) Findings were filed on the 1st day of July, 1942 (R. 28), and judgment entered on the 1st day of July, 1942. (R. 38.) Motion for a new trial was duly and regularly made within the time provided for which motion was by the Court denied and this appeal was thereupon timely taken.

Appellants were the general contractors for the installation of the gasoline distribution system at the Naval Air Base in Alameda, California. Appellants entered into a subcontract with Andrew A. Pollia, for the installation of the gasoline and water pipes as shown on the plans and specifications of the contract between appellants and the United States.

Appellants' main office was in Los Angeles. One, Eugene Ceriat, the employee of appellants, was in

charge of the work at the Naval Air Base at Alameda. Ceriat and Pollia had certain negotiations which culminated in Pollia proposing to do certain work under a subcontract. Ceriat wrote to appellants in Los Angeles, stating what Pollia proposed to do. This letter was offered in evidence and marked plaintiffs' "Exhibit 1". (R. 110.)

On receipt of this letter appellants notified Ceriat to have Pollia draw up a contract, which Pollia did, and thereafter it was executed by the parties. The contract was admitted in evidence, marked plaintiffs' "Exhibit 2", and is in the words and figures following:

"May 28, 1940

Re: Gasoline Storage and Distribution and Distribution System Naval Air Station, Alameda, Calif. Specification No. 9505.

Flotation Systems, Inc.,
4031 Goodwin Avenue
Los Angeles, California

Gentlemen:

For the sum of Sixteen Thousand and Forty Dollars, ($16,040.00), I propose to furnish the following labor and material, all in strict accordance with Bureau of Yards and Docks Specification 9505:

Item 1: Complete installation of all gasoline pipe line as covered by plans accompanying Spec. 9505, including necessary excavation, backfill, replacement of red rock surfacing, repairs to any existing roads, welding and testing all joints, and all connections to Pit Boxes A (1), B (1), C-2 (2), D (8), and E (16). It is understood that Flotation Systems, Inc. will furnish all necessary

pipe and fittings, and I will furnish all welding materials and equipment.

Item 2: Complete installation of all Cast Iron U. S. Joint Water lines as covered by plans accompanying Spec. 9505, including necessary excavation, backfill, replacement of red rock surfacing, repairs to any existing roads, connection and testing of all joints, and all connections to Pit Boxes A (1), B (1), C-2 (2), D (8), and E (16). It is understood that Flotation Systems, Inc. will furnish all pipe, fittings, follower rings, and gaskets, and that I will furnish the 10″ rock base under the pipe lines in the trench.

Item 3: Complete installation of a 12″ terra-cotta drain pipe, to be installed in lieu of the 8″ drain line as covered by the plans accompanying Spec. 9505, and including necessary excavation, backfill, replacement of red rock surfacing, repairs to any existing roads, connection of joints, and all connections to Pit Boxes C-2 (2) and D (8). It is understood that I will furnish the 12″ terra-cotta pipe, all fittings required and the 10″ rock fill under pipe in trenches. It is further understood that in the event any excavating below a depth of six feet is required on this line, I will receive $1.60 per cubic yard of excavation done below this depth, in addition to the amount stipulated above.

Item 4: Painting of all piping installed by us inside of pit boxes A, B, C, D, and E.

I agree to wrap all joints and fittings installed under Item 1, above, for the following prices, to be paid in addition to the amount stipulated above:

6″ joints and fittings @$2.10 each
5″ joints and fittings @ 1.70 each
4″ joints and fittings @ 1.40 each
3″ joints and fittings @ 1.10 each

I agree to begin work within three days (holidays excluded) after acceptance of this agreement, and to complete all work after acceptance of this agreement, and to complete all work covered by this agreement within forty-five (45) days after acceptance of this agreement; and that in the event of my failure to do so, Flotation Systems, Inc., will have the right to proceed with the work and charge the cost of completing same against the amount stipulated in this agreement.

Terms are to be payments monthly on the basis of 90% of the work completed, and the balance of 10% to be paid upon completion of work.

Respectfully yours,
Andrew A. Pollia.

Accepted by Engene Ceriat.
Date 5-28-40."

POINTS ON APPEAL.

1. Erroneous interpretation of the contract materially affecting the rights of the parties.

2. The evidence is insufficient to support the findings or the judgment.

ARGUMENT.

First Point: Erroneous interpretation of the contract materially affecting the rights of the parties:

It is the contention of the appellants that the Court misconstrued the contract. In its memorandum decision set forth in the record, page 27, the Court held that the expression used in the contract "to pit boxes" applied to the installation of piping and fitting in the pit boxes as well as welding and testing all joints to pit boxes.

Item 1 and Item 2 of the contract are identical, except that Item 1 applies to the installation of gasoline pipe lines and Item 2 applies to the installation of cast iron water lines. In Item 1, Pollia proposes to furnish the labor and material for the "Complete installation of all gasoline pipe line as covered by plans accompanying Spec. 9505". In addition thereto the item continues, "including necessary excavations, backfill, replacement of red rock, surfacing, repairs to any existing roads, welding and testing all joints and all connections to pit boxes". Pollia contends that under this wording of the contract he was not required to install any pipes or fittings in the pit boxes even though they were shown on the plans accompanying the specifications.

Appellants claims that the correspondence between the parties, prior to the entering into the contract shows that it was the intention of the parties that Pollia would perform all the work of installing the piping and fittings in the pit boxes.

The first clause of Item 1 of the contract provides for "complete installation of all gasoline pipe line as covered by plans accompanying Spec. 9505". If the contract had stopped there, I do not think there could

have been any question that all of the piping shown on the plans, whether inside or outside of the pits, would have had to have been installed by Pollia. The word "including" must, under a proper interpretation of the contract, be inserted before each of the provisions following, that is, the word "including" provides for other and additional work and does not pertain to the installation, but only to welding and testing all joints and all connections to pit boxes.

Proper construction of those clauses of the contract would be as follows:

Including all necessary excavation;
Including backfill;
Including replacement of red rock;
Including surfacing;
Including repairs to existing roads;
Including welding, and testing all joints, and all connections to pit boxes.

The expression "to pit boxes" applies only to the welding and testing of joints and does not apply to the installation thereof.

Pollia testified (R. 53) that he saw the original plans and specifications, and also that he checked the original plans and specifications (R. 117) before submitting a bid.

As the work progressed and changes were made which entailed extra work, before doing or performing the work caused by these changes, Pollia demanded an extra work order. He never demanded an extra work order for the installation of the piping and fittings installed by him in the pits shown on the original

plans and specifications and had performed 80% of the installation of the piping and fittings inside the pits before he raised any question as to whether or not this work was in the contract. (Testimony of Snyder, R. 136 and 137.)

These two facts are significant,

First: That no extra work order was ever demanded by Pollia for the doing of work inside the pits;

Second: That he had performed 80% of said work before raising any question about it. (R. 137.)

The last item in the bill of particulars is four thousand nine hundred three and 20/100 ($4903.20) dollars, predicated upon the letter dated August 23rd, 1940. This letter was admitted in evidence marked plaintiffs' "Exhibit 10", and is in the words and figures following, to-wit:

"P. O. Box 416
Alameda, California
August 23, 1940

Andrew A. Pollia
San Francisco, California

Dear Mr. Pollia:

In regard to agreement entered into May 28th, 1940 for certain pipe laying and plumbing work in conjunction with Contract NOy-3850 at the Naval Air Station, Alameda, California, you are authorized to proceed as instructed by us with any additional work necessary to complete the pit piping, but not covered by the original plans and specifications. For any such work not covered by above agreement and not shown in the plans and specifications at the time the agreement

was entered into, you are to receive payment on the basis of the following unit prices, and the quantities involved are to be determined by inventory at the end of the job:

Bolting up 4" Flange Joints	$2.50 each
" " 6" " "	3.75 "
" " 2½" " "	1.50 "
4" Pipe Welds	1.75 "
5" " "	2.40 "
6" " "	3.60 "
1½" " "	1.05 "
Installing 4" Valves	6.50 "
Installing 6" Valves	13.50 "
Patch Wrapping on Pipe Lines	1.10 per foot

This authorization *does not* supercede that covered by our letter of August 7, 1940, and the above prices on welding apply only to welds that must be made in place, inside the pits. On any welding that can be done at the bench, the price of $0.04 per inch applies.

Very truly yours,
Flotation Systems, Inc.
By A. S.
Arthur T. Snyder, Engineer.

ATs-
cc-L.A.Office."

It is the contention of Pollia that this letter is an authorization by Flotation Systems, Inc., for him to do all of the work of the installation of piping and fittings inside of the pits even though most of that work was shown on the original plans and specifications and even though he had performed 80% of this work prior to August 23rd, 1940.

It is his claim that this letter was an extra work order for the doing of this work as under his interpretation of the contract he was only to lay the pipes up to the pits and not in the pits.

Pollia's own testimony (R. 75) is a direct contradiction of this contention. This letter specifically exempts or excludes any work or piping shown on the original plans and specifications and was issued to cover only extra work caused by changes in the original plans.

That Pollia clearly understood that this letter was for the doing of extra work not shown on the original plans is shown by his testimony (R. 75), wherein he testified that this letter was given to him to cover extra work inside of the pits on a unit basis. It is quite evident therefore, that from the time of entering into the contract, to-wit, May 28th, 1940, up until the date of this letter, August 23rd, 1940, that Pollia interpreted the contract to mean that he had to perform the work shown on the plans and specifications inside of the pits as well as outside. It was only after he received this letter of August 28th, 1940, that any question was raised as to the interpretation of the meaning of the expression in the contract *to pit boxes,* and that Pollia up until August 23rd, 1940, interpreted the contract to mean that he should install all the piping and fittings as shown on the plans and specifications in accordance with the first paragraph of the contract which provides,

> "For the sum of $16040.00, I propose to furnish the following labor and materials, all in strict

accordance with the Bureau of Yards and Docks Spec. 9505"

"Item 1: Complete installation of all gasoline pine line as covered by plans accompanying Spec. 9505."

It therefore follows that from the time Pollia drew up the contract on May 28th, 1940, to the 23rd of August, 1940, it was his understanding that under the contract he was required to install all pipe and fittings in pits shown on original plans and specifications and therefore, the Court's interpretation of the contract, that Pollia was not required to install the pipe and fittings in the pits, shown on the plans and specifications, is contrary to the intention of the parties and an erroneous interpretation.

Second Point: The evidence is insufficient to support the findings or the judgment:

The testimony of Andrew A. Pollia, the plaintiff, was very indefinite and he does not even attempt to justify the items of his bill of particulars. On the other hand the testimony of Arthur F. Snyder, commencing on page 139, of the record, shows that he kept complete records and detailed accounts of the work done by Pollia, and from his records he testified in detail as to each and every item of the bill of particulars:

	Proper Charge
"Item 1—In the Bill of Particulars is an extra work order, Plaintiffs' 'Exhibit 9', it is a letter dated August 7, 1940, and the pertinent part thereof is as follows: You are authorized to proceed with the following extra work in addition to that covered by our contract agreement dated May 28th, at the unit prices shown below:	
Wrap approximately 269–6″ joints and fittings at $2.10.	
Wrap approximately 5–5″ joints and fittings at $1.70.	
Wrap approximately 46–4″ joints and fittings at $1.40.	
Wrap approximately 18-3″ joints and fittings at $1.10.	
269–6″ @ $2.10 $564.90	
5–5″ @ $1.70 8.50	
46–4″ @ $1.40 64.40	
18–3″ @ $1.10 19.80	
Total $657.60	
Item 1 of the Bill of Particulars makes a charge of $663.60; it should be	$657.60
Item 2—No joints were welded other than those covered in the contract and these especially authorized by extra work orders which orders were admitted in evidence. This item two of the Bill of Particulars does not appear in any of the work orders, it should be eliminated (R. 139).	

	Proper Charge
Item 3—In item 3, the testimony was that the amount agreed upon between Mr. Pollia and Mr. Snyder was 20½ hours at $7.50 per hour, making a total of $143.50, instead of $164.00 (R. 140)	143.50
Item 4—The same agreement was entered into. Mr. Snyder's record showed that there was 50½ hours at $7.50 per hour which would make a total of $353.50 instead of $404.00 (R. 140)..	353.50
Items 5 and 6—Snyder's testimony (R. 141) shows that all pipe except that in Item 7, of the Bill of Particulars, was wrapped by the Non Corrosive Products Company and delivered to Pollia in a perfect condition. Any damage to the wrapping that might require patching was due to the careless manner in which the pipe was handled by Mr. Pollia and no order for the doing of this was demanded or obtained by Pollia and should be eliminated. And it is to be noted that under Item 7, of the Bill of Particulars, which was extra that Mr. Pollia required a work order for this, which authorization was contained in the letter of August 23rd, 1940, and amounts only to $36.00. These two items 5 and 6 in the Bill of Particulars were not extra and no orders were ever obtained for the doing of any of this work. It seems strange	

Proper Charge

that Mr. Pollia would obtain an extra work order for the doing of $36.00 worth of work and did not obtain an extra work order for the doing of work charged in Items 5 and 6 amounting to $2145.00. Further, all pipe and joint wrapping done on the job was done by A. R. Reed & Co., and his total bill for labor and material for this was $487.52. (R. 143.)

Item 7—Is correct. That was for wrapping 120 feet of 4″ pipe at 30¢ a foot 36.00

Item 8—Clearly was a part of Mr. Pollia's contract. The pipe was distributed by the carrier beside the trenches where it was to be installed (R. 144), and no mention was ever made by Mr. Pollia to the effect that the distribution of this pipe was not part of his contract and this item should be eliminated.

Item 9—Should be eliminated as this was part of the testing which Pollia agreed to do in the contract.

Item 10—Should be eliminated as this is part of the testing.

Item 11—Should be eliminated as this is part of the contract. The pipe cannot be installed unless it is cut and fitted.

	Proper Charge
Item 12—Mr. Snyder testified that Pollia told him the amount due for the use of the Civil Engineer was the sum of $4.35	4.35
Item 13—Is correct and was covered under the extra work order No. 1215	242.00
Item 14—Item 14 of the Bill of Particulars is extra work as ordered by work orders 273 and 274. These two orders applied to the same work. (R. 149.) This work applied to the installation of equipment in ten (10) fueling pits which were not in the original contract; they were known as Pits 'F'. There were ten fueling pits at the price of $77.00 per pit, but by reason of the fact that equipment was not available there were two hose reels in each pit which were not installed by Pollia. Cost of installing these was $10.00 a hose reel which would make a deduction of $200.00. This charge instead of $770.00 should be $570.00 (R. 150)....	570.00
Item 15—is correct.....	165.00
Item 16—is correct.....	208.00
Item 17—The letter dated August 23rd, mentioned in the Bill of Particulars, Plaintiffs' 'Exhibit 10' (R. 76), is as follows: 'In regard to agreement entered into May 28th, 1940, for certain pipe laying and plumbing work in conjunction with Contract No. t-3850 at the Naval Air	

Station, Alameda, California, you are authorized to proceed as instructed by us with any additional work necessary to complete the pit piping, but not covered by the original plans and specifications. For any such work not covered by above agreement and not shown in the plans and specifications at the time the agreement was entered into, you are to receive payment on the basis of the following unit prices and the quantities involved are to be determined by inventory at the end of the job.

Belting up 4" Flange Joints	$2.50	each
" " 6" " "	$3.75	"
" " 2½" " "	$1.50	"
4" Pipe Welds.....	$1.75	"
5" " "	$2.40	"
6" " "	$3.60	"
1½" " "	$1.05	"
Installing 4" Valves.....	$6.50	"
" 6" "	$13.50	"
Patch Wrapping on Pipe Lines (per foot).....	$1.10	

This authorization does not supersede that covered by our letter of August 7, 1940, and the above prices on welding apply only to welds that must be made in place, inside the pits. On any welding that can be done at the bench, the price of $0.04 per inch applies."

Mr. Snyder testified that he kept a detailed record of all the work and of all changes from original

plans and specifications and all additional work caused by such changes and from these records he testified in full as to the amount of extras to which Pollia was entitled under and pursuant to the letter of August 23, and that amount was the sum of $269.73. (R. 151 and 152.)

In this connection there is an error in computation in the record as follows:

> "Now the amount of welded flanges for the storage tanks 32–6" bench welds at 88¢ each, the record says a total of $128.16." This figure is incorrect, it should be $28.16, as 32 welds at 88¢ each, total $28.16.
>
> Pollia's testimony with reference to this work is found in R. 75 and 76, and the only mention of work done by him under and pursuant to this letter is bolting up 4" flange joints at $2.50 apiece. (R. 75 and 76.) Pollia said he did that extra work. Mr. Snyder's testimony above referred to set forth in detail what was done under the letter of August 23rd, or plaintiffs' "Exhibit 10", the charge in the Bill of Particulars for this is $4903.20.
>
> There is no testimony in the record save and except the above referred to as to what constitutes this charge. The proper amount for this should be $269.73.... $269.73

The balance, to-wit, of four thousand six hundred forty-three and 47/100 ($4643.47) dollars, in Item 17,

of the Bill of Particulars, is a charge by Pollia for the doing of the work in the pits shown on the plans and specifications. Pollia claims that the letter of August 23rd, 1940, plaintiffs' "Exhibit 10", was an authorization for the doing of this work.

This letter specifically exempts or excludes any work or piping shown on the original plans and specifications and it was issued to cover only extra work. That Pollia clearly understood that the letter was for the doing of extra work is shown by his testimony (R. 75) when he testified that this letter was issued to cover extra work inside of the pits on a unit basis. That certain work inside of the pits was being done by the Aqua Systems and that it required bolting up of the valves where the Aqua Systems terminated their work. That all of this work was shown on the plans and specifications and Pollia knew that it was on the plans and specifications is borne out by his testimony (R. 300 and 301):

"Q. Coming to your letter of August 29th, complete work in pits A, B, C, D, and E.

A. Yes.

Q. Was the work done by you as shown in your statement shown on the plans and specifications?

A. Was the work done by me?

Q. Yes. I am not trying to mislead you. You actually did that work?

A. Yes, I did that work.

Q. Now was that shown on the plans and specifications or on that blue print?

A. That was shown on these plans."

It is quite evident that Pollia knew that there was considerable piping and fitting to be installed in the pits and also that this letter of August 23rd, was an authorization for the installation of extra work caused by changes in the plans, and therefore could not be an authorization for the doing of the work in the pits shown on the plans and specifications.

COUNTER CLAIMS AND OFFSETS.

Appellants, Flotation Systems, Inc., pleaded in its answer offsets and counterclaims amounting to the sum of two thousand one hundred seventy-one and 30/100 ($2171.30) dollars. These offsets and counterclaims were itemized and attached to the answer as "Exhibits B and C". (R. 14 and 15.)

There is an error in the record with reference to the total amount of items set forth in "Exhibit C". The record set forth the amount of one thousand three hundred sixty-five and 58/100 ($1365.58) dollars, but the correct figure should be one thousand four hundred sixty-five and 58/100 ($1465.58) dollars.

The items set forth in "Exhibit C" of the answer are bills for labor and material contracted for by plaintiff Pollia, and these bills not having been paid, demand was made upon Flotation Systems, Inc., for the amount thereof and subsequently the payment of these accounts was authorized by Pollia, testimony of Tamba (R. 101 and 105), and in the trial of the

action plaintiff did not dispute the correctness of these bills so paid by Flotation Systems, Inc., appellants herein.

With respect to the items set forth in "Exhibit B", totaling seven hundred five and 72/100 ($705.72) Dollars, Arthur Snyder testified as to the correctness of these amounts and the payment thereof by Flotation Systems, Inc. (R. 211, 212, 213, 214 and 215.) There was no contradiction or refutation of this testimony by the plaintiff and therefore the correctness of the amounts and the payment thereof by Flotation Systems, Inc., was admitted by plaintiff Pollia.

Neither the findings nor the judgment contained any reference to these admitted offsets and counterclaims.

A recapitulation of the amounts and admitted offsets is as follows:

"Offsets and credits due from Pollia to Flotation Systems:		
'Exhibit B'	$ 705.72	
'Exhibit C'	1,465.58	
Total		$2,171.30
Contract	$16,040.00	
Extras	2,649.68	
Total	$18,689.68	
Payments	17,272.04	
Balance due Pollia		$1,417.64
Over payment to Pollia		$ 753.66"

We submit that the Court's interpretation of the contract is erroneous and that the finding that plaintiff is entitled to judgment as prayed for is wholly unsupported by the evidence and that for the reasons herein set out, judgment must be reversed.

Dated, San Francisco,
April 12, 1943.

JOHN D. HARLOE,
Attorney for Appellants.

No. 10,359

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

FLOTATION SYSTEMS, INC. (a corporation), and UNITED STATES FIDELITY AND GUARANTY COMPANY (a corporation),

Appellants,

vs.

UNITED STATES for use of ANDREW POLLIA, T. G. SHANNON and B. W. MACKIE, co-partners doing business under the fictitious name and style of Shanmac Co.,

Appellees.

BRIEF FOR APPELLEES.

J. J. DOYLE,
519 California Street, San Francisco,
Attorney for Appellee.

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Mills Building, San Francisco,
Attorneys for Appellees, T. G. Shannon and B. W. Mackie, co-partners doing business under the fictitious name and style of Shanmac Co.

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Appellees.

BRIEF FOR APPELLEES.

STATEMENT OF QUESTIONS PRESENTED.

1. Did the trial Court erroneously interpret the contract?

2. Is the evidence sufficient to support the findings and judgment?

STATEMENT OF FACTS.

On the 22nd day of January, 1940, Flotation Systems, Inc., a corporation, was awarded a contract by

the United States of America for the installation of a gasoline storage and distribution system at the Naval Air Station located in the City of Alameda, County of Alameda, State of California (R. 3).

The Flotation Systems, Inc., a corporation, as principal, and United States Fidelity and Guaranty Company, a corporation, as surety, executed and delivered to the Navy Department of the United States of America a certain security bond in the penal sum of one hundred seventy-five thousand dollars ($175,000.00), guaranteeing the faithful performance by the Flotation Systems, Inc., a corporation, of said contract in the payment of all claims of laborers and material men and sub-contractors (R. 3).

In May, 1940, one Andrew Pollia was at the site engaged in the performance of some work in no way connected with this litigation (R. 49).

Eugene Ceriat, superintendent of construction for Flotation Systems, Inc., a corporation (R. 49-62-111), approached Pollia to ascertain whether or not Pollia would be interested in submitting a bid for installing pipe lines relative to gasoline storage system (R. 49-50). Pollia submitted a bid—letter of May 27, 1940, Plaintiff's Exhibit 1 for identification (R. 50), which bid was not acceptable (R. 51); after some discussion between Messrs. Ceriat, Pollia and Snyder (R. 50-51-81-82) the latter carried on the company's payroll and record as an engineer (R. 131) but acting as a general clerk (R. 51-131) revised Pollia's proposal (R. 132) thereafter drew up (R. 167-168) and typed (R. 81-131) a contract on Pollia's stationery (R. 51).

On the 28th day of May, 1940, under the circumstances set forth in the preceding paragraph, said document was signed by Pollia and submitted to Ceriat "who read it carefully * * * did not go into details * * * satisfactory to me" (R. 112) and the same was "Accepted by Eugene Ceriat, Date 5-28-40" (R. 52).

Thereafter said contract, Plaintiff's Exhibit 2 in evidence, was forwarded to the main affice of Flotation Systems, Inc., a corporation, at Los Angeles, where it was received, checked, or at least read (R. 223-244-245) by Fred E. Kalte, Vice President (R. 222) of Flotation Systems, Inc., a corporation, and then passed same to James Q. Henry (R. 224), President (R. 224) of Flotation Systems, Inc., a corporation, who, in ink and by longhand, made the following notation "O. K. James Q. Henry" and then said document filed (R. 224).

Pollia actively undertook the performance of said contract prior to the time said document was actually okayed by James Q. Henry (R. 53).

On the 1st day of August, 1940, Pollia, pursuant to request, arranged for and obtained an itemization (R. 64) totaling Four Thousand Seven Hundred Thirty-seven Dollars and forty-nine cents ($4,737.49) (R. 73) to be used as a basis of partial payment, during which and for the first time an issue as to interpretation of the contract was raised by Mr. Snyder (R. 66-72-81-162-193-225-236).

Pollia thereafter proceeded to Flotation's Los Angeles office where further discussion was had on

the subject (R. 65). Norwithstanding the aforementioned conversations, Flotation issued, on account, a check to Pollia in the sum of One Thousand Dollars ($1000.00) with the advice balance would be paid next day (R. 69-89)—"next trip to Alameda in a week or so" (R. 68-73).

Pollia then returned to San Francisco and job site (R. 68).

Several days later Pollia was informed by Flotation's Mr. Taylor that "he had taken the matter up with their attorney * * * was included in the contract and that they were not going to pay it * * *", (R. 69) and that irrespective of any discussions at Alameda, Los Angeles, partial payment and continuation of his sub-contract, that payment would not be made "because he (Taylor) understood the contract to mean" * * * "he believed, or had been informed, that his contract provided that you (Pollia) should do all the work in the pits" (R. 90-91).

Pollia completed sub-contract according to plans and specifications (R. 62-72) and has not been paid (R. 72) the balance due and owing being the sum of Nine Thousand Seven Hundred Twenty-seven Dollars and twenty-one cents ($9,727.21) (R. 76).

Flotation's point as to interpretation involves the use of the words "to pit boxes".

ARGUMENT.

I.

DID THE TRIAL COURT ERRONEOUSLY INTERPRET THE CONTRACT?

Litigants are not excepted from the statutes which provide.

> "A contract is an agreement to do or not to do a certain thing."
>
> *Civil Code of the State of California,* Sec. 1549.

> "Express contract is one, the terms of which are stated in words."
>
> *Civil Code of the State of California,* Sec. 1620.

> "The execution of a contract in writing, whether the law requires it to be written or not, supersedes all the negotiations or stipulations concerning its matter which preceded or accompanied the execution of the instrument."
>
> *Civil Code of the State of California,* Sec. 1625.

The record discloses that in plaintiffs' exhibit in evidence No. 2, items 1, 2, 3 and 4, that the phrase "to the pits" is used.

Appellants contend that Appellee under the contract required to perform work "in the pits", although the contract is lacking the use of any such words as "addition", "also", "in", "inside", "including", or even words of similar import.

In this connection it is to be noted that defendants saw to it: That the word "addition" was used in Plaintiff's Exhibit in Evidence No. 9, and "additional" in Plaintiff's Exhibit in Evidence No. 10.

It is also to be specifically noted that in Appellants' opening brief, page 8, that goodly use is made of the word "including".

It is most difficult to appreciate that while Appellants made use of the words "addition", "additional", and now make use of the word "including" upon some occasions, yet did not so do in Plaintiff's Exhibit in Evidence No. 2, why it is urged and/or expected that "proper construction" requires the incorporation and reading of the above quoted words into the contract of May 28, 1940 in order to obtain "the proper construction".

In order to ascertain whether or not the Court erroneously interpreted the contract, consideration must be given as to what the word "to" means:

> "to—primarily to express the relation of direction of approach and arrival, making its governed word denote the terminus * * * approach and reaching so as to attain or reach as a limit".
>
> *Webster's New International Dictionary*—Second Ed. Unabridged.

As to what sense (interpretation) the word "to" is used

> "The language of a contract is to govern its interpretation if the language is clear and implicit and does not involve an absurdity."
>
> *Civil Code of the State of California,* Sec. 1638.

> "The words of a contract are to be understood in their ordinary and popular sense rather than according to their strict legal meaning unless used by the parties in a technical sense or unless a

special meaning is given to them by usage, in which case the latter must be followed."

Civil Code of the State of California, Sec. 1644.

"Words are to be understood in their plain and literal meaning."

Clark on Contracts, 3rd Edition 502, Par. 219.

"Further, a court will not resort to construction where the intent of the parties is expressed in clear and unambiguous language but will enforce the contract according to its terms.

A contract is not ambiguous where the court can determine its meaning without any other guide than a knowledge of the simple facts on which from the nature of language in general, its meaning depends."

13 *Corpus Juris* 520, Par. 481.

"The intention of the parties is to be deduced from the language employed by them and the terms of the contract where unambiguous are conclusive in the absence of averment and proof of mistake. The question being not what intention existed in the minds of the parties but what intention is expressed by the language used. When a written contract is clear and unequivocal, its meaning must be determined by its contents alone and a meaning cannot be given it other than that expressed. Hence words cannot be read into a contract which import an intent wholly unexpressed when the contract was executed. Where the contract evidences care in its preparation, it will be presumed that its words were employed deliberately and with intention.

It is not the province of the court to alter a contract by construction or to make a new contract for the parties. Its duty is confined to the interpretation of the one which they have made for themselves without regard to its wisdom or folly as the court cannot supply material stipulations or read into the contract words which it does not contain."

13 *Corpus Juris* 524, Par. 485 (3).

"in construing a written contract the words employed will be given their ordinary and popularly accepted meaning in the absence of anything to show that they were used in a different sense."

13 *Corpus Juris* 531, Par. 489.

Hurried consideration establishes that the word "to" is one most frequently used in the English language. Few people would seriously contend that the word "to" is analogous, means, or is synonymous with the words "addition", "also", "in", "inside", "including".

Even Mr. Kalte finally conceded

"Q. Isn't it true that in looking over the agreement, it was your opinion at that time that Mr. Pollia did not have to do the work in the pits—I am talking about the morning in Los Angeles?

A. I would say that according to the way I read the agreement, it could be interpreted that way, but personally I did not think it was."

R-234.

Now Appellants urge that the trial Court erroneously interpreted the contract the very moment the

Judge failed to construe the word "to" so as to not coincide with Mr. Kalte's personal idea on the subject.

Notwithstanding such admission, appellants want this Court to do two things: First, to rule that the trial Judge erroneously interpreted the contract, and second, in effect re-write the contract.

II.

IS THE EVIDENCE SUFFICIENT TO SUPPORT THE FINDINGS AND JUDGMENT?

The pertinent sections applicable to this appeal are:

> "Issues of fact in civil cases in any District Court may be tried and determined by the Court without the intervention of a jury, whenever the parties or their attorneys of record file with the clerk a stipulation in writing waiving a jury. The findings of the Court upon the facts which may be either general or special shall have the same effect as the verdict of a jury."
>
> *U. S. Code Annotated,* Title 28, Sec. 773,

and

> "when an issue of fact in any civil cause in a District Court is tried and determined by the Court without the intervention of a jury according to Sec. 773 of this title, the rulings of the Court in the progress of the trial of the cause, as excepted to at the time and duly presented by a Bill of Exceptions, may be reviewed upon a writ of error or upon appeal, and when the find-

ing is special, the review may extend to the determination of the sufficiency of the facts found to support the judgment."

U. S. Code Annotated, Title 28, Sec. 875.

Under the two questions presented, interpretation and sufficiency of the evidence, Appellants are required to convince or demonstrate, if their appeal is to be successful, that the record discloses neither conflict nor contradiction. That Appellants' theory is untenable may be readily ascertained by reference to Appellee's statement of facts. The case is therefore brought well within the rule that

"Conflicts or contradictions in the evidence are subjects for consideration by the trial Court and its findings will not be set aside because thereof."

Pabst Brewing Co. v. E. Clemens Horst Co. (C.C.A. Cal. 1920), 264 F. 909.

"Findings of Court based on conflict of evidence are conclusive on appeal."

Galle v. Hamburg (N. Y. 1916), 233 F. 424, 147 C.C.A. 360.

"In an action at law tried by the Court without a jury, where special findings are not made, the general finding is conclusive on the facts, and an Appellate Court cannot review the evidence by only rulings made during the progress of the trial duly excepted to and presented by Bill of Exceptions in view of this section."

S. P. Co. v. Kalbaugh (C.C.A. Cal. 1927), 18 F. (2d) 837.

"When the findings in the trial Court involves mixed questions of law and fact and is general in its form, nothing is open to review in the Circuit Court of Appeals except the ruling made in the progress of the trial, the findings being conclusive as to the facts."

Humphreys v. 3rd National Bank (Ohio 1896), 75 F. 852, 21 C.C.A. 538 affirming C.C. 1895.

"When a common law action is tried to the Court, its findings of fact are conclusive on appeal, and if the facts found are sufficient in law to support the judgment, it must stand unless the Court erred in admitting or reviewing evidence over the objection of the complaining party."

Eli Mining and Land Co. v. Carleton (Colo. 1901), 108 F. 24, 47 C.C.A. 166.

"In an action tried to the Court, findings of fact are conclusive in the Appellate Court, though it might have reached a different conclusion on the evidence."

National Surety Co. v. Globe Grain and Milling Co. (C.C.A. Cal. 1919), 256 F. 601.

"Where an action at law is by stipulation tried to the court under the provisions of this section and Sec. 773 of this title, the findings of fact by the court are not reviewable by Appellate Court if there is any competent evidence on which that could have been made."

Chautauqua Institution v. Zimmerman (Ohio 1916), 233 F. 371, 147 C.C.A. 307;

Ill. Surety Co. v. U. S. (N. Y. 196), 229 F. 527.

"The court's findings upon question of fact, a jury having been waived, are not subject to review by a reviewing court if there was any evidence upon which such findings could be made."

Kissel Motor Car Co. v. Walker (C.C.A. Tex. 1921), 270 F. 492.

"An assignment that the court erred in making a particular finding of fact is not reviewable on appeal if there is any evidence on which to base the finding."

San Fernando Copper Mining Co. v. Humphreys (Cal. 1904), 130 F. 298.

"Findings of lower court on the evidence will not be disturbed unless they are manifestly wrong."

Boteler v. Plugge (App. D. C. 1927), 17 F. (2d) 221.

"Findings supported by any evidence should not be disturbed where jury is waived."

Boack v. Robie (C.C.A. Ill. 1926), 16 F. (2d) 33.

"Finding which is not shown to be clearly wrong will not be disturbed on appeal."

J. Ochoa and Hermano v. Perez Blanco (C.C.A. Porto Rico 1926), 15 F. (2d) 618.

"A finding by the trial court will not be disturbed by the court on appeal when there is any

evidence to support it or the evidence tends to support it."

Dooley v. Pease (Ill. 1901), 21 S. Ct. 329, 180 U. S. 126.

"In a case tried by the court without a jury under this section and Sec. 773 of this title, the Supreme Court on a writ of error (or appeal) cannot pass on the weight and sufficiency of the evidence."

Dirst v. Morris (Ill. 1872), 14 Wall. 484.

"Findings of fact on the weight of the evidence are not reviewable."

Hathaway v. First Nat'l. Bank (Mass. 1890), 10 S. Ct. 608, 610, 134 U. S. 494.

"Errors alleged in the findings of the court on a trial without a jury are not subject to revision by the Circuit Court of Appeals, that Court being limited in that connection to the question whether there is any evidence upon which such findings could be made."

Paul v. Delaware Co. (C.C. N. Y. 1904), 130 F. 951;

Supreme Lodge Knights of Pythias v. England (Ark. 1899), 94 F. 369, 36 C.C.A. 298.

Appellee submits that under the record and the law that the judgment be affirmed.

Dated, San Francisco,
May 12, 1943.

J. J. Doyle,
Attorney for Appellee.

STIPULATION OF COUNSEL.

It is hereby stipulated that this brief may be also considered the brief of T. G. Shannon and B. W. Mackie, co-partners, doing business under the fictitious name and style of Shanmac Co.

Dated, San Francisco,
May 12, 1943.

JOHN D. HARLOE,
Attorney for Appellants.

TORREGANO AND STARK,
By CHARLES M. STARK,
Attorneys for Appellees, T. G. Shannon and B. W. Mackie, co-partners doing business under the fictitious name and style of Shanmac Co.

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Appellants,

vs.

UNITED STATES for use of ANDREW POLLIA, T. G. SHANNON and B. W. MACKIE, co-partners doing business under the fictitious name and style of Shanmac Co.,

Appellees.

APPELLANTS' REPLY BRIEF.

JOHN D. HARLOE,
De Young Building, San Francisco,
Attorney for Appellants.

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PERNAU-WALSH PRINTING CO., SAN FRANCISCO

No. 10,359

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

FLOTATION SYSTEMS, INC. (a corporation), and UNITED STATES FIDELITY AND GUARANTY COMPANY (a corporation),

Appellants,

vs.

UNITED STATES for use of ANDREW POLLIA, T. G. SHANNON and B. W. MACKIE, co-partners doing business under the fictitious name and style of Shanmac Co.,

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APPELLANTS' REPLY BRIEF.

Appellants have no quarrel with and admit that the elementary principles of law cited by appellee in his brief are correct.

The appellants claim that the law cited by appellee is not applicable to the facts of the case. Appellee states, page 2 of his brief, that there were discussions prior to entering into the contract between Ceriat, Pollia and Snyder and that after said discussions Snyder drew up and typed a contract. Mr. Snyder's testimony on this question was to the effect (R. 167), that he had no discussion with Mr. Pollia or Mr.

Ceriat regarding the terms of the contract, but that after they had agreed upon the terms he merely went over the contract with a view of checking the wording to see if it read right. He further testified that he had no knowledge, at the time, what Mr. Pollia and Mr. Ceriat had agreed to. (R. 168.)

On page 3 of his brief appellee states that pursuant to a request he arranged for and obtained an itemization of work totaling four thousand seven hundred thirty-seven and 49/100 ($4737.49) dollars. At Mr. Pollia's request an inventory of the work already done was prepared by Mr. Snyder (R. 162), and at page 193 of the record, Mr. Snyder testified as to what and why this inventory was made. His testimony is that Mr. Pollia stated that he was going to get paid for all of the work inside of the pits and he wanted an inventory of the work already performed by him and Mr. Snyder took an inventory of the work that he had done.

On page 194 he testified that Mr. Pollia was the first one to raise any question about payment for work inside of the pits and this inventory, that was made up by Mr. Snyder, had nothing to do with the item of four thousand seven hundred thirty-seven and 49/100 ($4737.49) dollars. (R. 171.) This item was a number of payments which had already been made totaling that amount. (R. 74.)

Mr. Pollia, himself, testified that there were various checks that were issued totaling $4737.49, which covered extra work orders and work performed pursuant to the contract. (R. 74.)

This amount of four thousand seven hundred thirty-seven and 49/100 ($4737.49) dollars, was contained in the statement or letter of August 29th, and was listed therein as payment No. 2 (R. 208), which had been paid prior to this date. It therefore could not have been used as a basis for partial payment and the question raised with reference to work done in the pits was first raised by Mr. Pollia. (R. 194.) The reason for the payment of the one thousand ($1000.00) dollars, is explained by Mr. Kalte. (R. 229.)

Running through the entire record there is the undisputed evidence that for each and every bit of work which Mr. Pollia did, which under his interpretation was not included in the contract, that before the doing thereof he demanded an extra work order and never having demanded an extra work order for the doing of the work inside of the pits shown on the plans and specifications, it is conclusive that he at all times up until the discussion arose, interpreted the contract to mean that he was to do this work. The undisputed testimony is, that he had performed approximately 80% of this work before this discussion arose. (R. 137.)

Appellants submit that there is no evidence to sustain the findings or the judgment.

Dated, San Francisco,
May 21, 1943.

Respectfully submitted,
JOHN D. HARLOE,
Attorney for Appellants.

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Appellees.

APPELLANTS' PETITION FOR A REHEARING.

JOHN D. HARLOE,
De Young Building, San Francisco,
Attorney for Appellants and Petitioners.

FILED
JUL 16 1943
PAUL P. O'BRIEN

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Appellees.

APPELLANTS' PETITION FOR A REHEARING.

To the Honorable Curtis D. Wilbur, Presiding Judge, and to the Associate Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

The appellants respectfully ask for a rehearing in this cause upon all the grounds which are set forth in the appellants' briefs in the cause but as we feel that it is probable that the Court will, on a petition for rehearing, consider only those points which its opinion failed to note or in connection with which we believe mistake has been made, we shall confine our argument on this petition to only one point, to-wit:

POINT ONE.

THAT THE COURT TOOK INTO CONSIDERATION ONLY PART OF THE OFFSETS PLEADED IN ITS ANSWER BY APPELLANTS.

We quote that part of the opinion:

> "In its answer Flotation pleaded by way of offset the sum of $705.72 paid by it in discharge of certain bills which it was said Pollia should have, but did not, pay."

Flotation in its answer pleaded by way of offset and counterclaim two separate distinct amounts, one for materials paid by it for Pollia, an itemized account of which was attached to the answer and marked "Exhibit B", totaling the sum of $705.72. This offset was taken into consideration by this Court in its modification of the judgment. Flotation also pleaded in its answer certain bills paid to materialmen in the sum of $1465.58 which bills were itemized and attached to the answer and marked "Exhibit C". This offset was not taken into consideration by this Court.

Again quoting from the opinion:

> "Flotation offered evidence in support of this offset, and so far as we can see there is no countervailing proof."

The same applies to the offsets pleaded and itemized in "Exhibit C" in the sum of $1465.58 and in the trial of the action, plaintiff not only did not dispute the correctness of these bils or these items of "Exhibit C", but specifically authorized the payment thereof (R. 101 and 105), wherein Theodore Tamba, attorney for Pollia, testified as follows:

"There was discussion between Mr. Harloe and me regarding the payment of certain claims which were made against the Flotation by reason of work furnished to Mr. Pollia by certain materialmen and Mr. Harloe asked me, in Mr. Pollia's presence, if it would be alright to pay those claims or those materialmen, whatever they were and I said that was agreeable."

Therefore, the payment of these bills having been authorized by plaintiff and Flotation having proved the payment thereof and said proof not having been disputed by plaintiff, the correctness is admitted.

We therefore submit that this offset in the sum of $1465.58 should be allowed, making the total offset and modification in the sum of $2171.30.

Dated, San Francisco,
July 16, 1943.

Respectfully submitted,
JOHN D. HARLOE,
Attorney for Appellants and Petitioners.

CERTIFICATE OF COUNSEL.

I hereby certify that I am counsel for appellants in the above-entitled cause and in my judgment the foregoing petition for rehearing is well founded in point of law as well as in fact and that said petition for a rehearing is not interposed for delay.

Dated, San Francisco,
July 16, 1943.

JOHN D. HARLOE,
Counsel for Appellants and Petitioners.